

United States

Circuit Court of Appeals

For the Ninth Circuit.

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HELEN M. SUTHERLAND, CHARLES W.  
SUTHERLAND, M. I. HIGGENS, MAY-  
BELLE HIGGENS and HELEN MAUDE  
LORENZ,

Appellants,

vs.

FRANK A. GARBUTT, CHANDIS SECURI-  
TIES COMPANY, a corporation, ALICE  
CLARK RYAN, LOG CABIN MINES COM-  
PANY, a corporation, and MUTUAL GOLD  
CORPORATION, a corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 484

Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.



No. 10,078

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In the District Court of the United States, Southern  
District of California, Central Division

Civil No. 714-J Civil

HELEN M. SUTHERLAND, CHARLES W.  
SUTHERLAND, M. I. HIGGENS, MAY-  
BELLE HIGGENS and HELEN MAUDE  
LORENZ,

Plaintiffs,

vs.

FRANK A. GARBUTT, CHANDIS SECURI-  
TIES COMPANY, a corporation, ALICE  
CLARK RYAN, LOG CABIN MINES COM-  
PANY, a corporation, and MUTUAL GOLD  
CORPORATION, a corporation,

Defendants.

### BILL OF COMPLAINT

(Stockholders' suit to cancel certain instruments,  
and for other relief.)

The plaintiffs above named present this, their  
bill of complaint against the defendants above  
named, and allege:

#### I.

Helen M. Sutherland and Charles W. Sutherland,  
Plaintiffs herein, are each citizens of the Dominion  
of Canada; M. I. Higgins and Maybelle Higgins,  
plaintiffs herein, are each citizens of the State of  
Idaho; Helen Maude Lorenz, plaintiff herein, is a  
citizen of the State of Oregon.

II.

Frank A. Garbutt and Alice Clark Ryan are each citizens [2] of the State of California. Chandis Securities Company is a corporation organized under the laws of the State of California.

Mutual Gold Corporation was organized as a corporation under the laws of the State of Washington May 11, 1932, and still so is. November 18, 1933, Mutual Gold Corporation duly qualified under the laws of the State of California to engage in business therein, and ever since has been so qualified.

About October 18, 1938, Log Cabin Mines Company was organized as a corporation under the laws of the State of California. Its capital stock was divided into ten thousand (10,000) shares, each share One Dollar (\$1) par.

III.

The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand (\$3,000) Dollars.

IV.

At and during all the times in this complaint mentioned the plaintiffs, and each of them were, and are, stockholders owning shares of the capital stock of Mutual Gold Corporation, to-wit: Helen M. Sutherland 333 shares, Charles W. Sutherland 333 shares, M. I. Higgens 333 $\frac{1}{2}$  shares, Maybelle Higgens 333 $\frac{1}{3}$  shares and Helen Maude Lorenz 500 shares, and each were such stockholders of Mutual Gold Corporation at the time of each of the trans-

actions herein complained of; that this action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. Plaintiffs maintain this action as stockholders of and for and on behalf of Mutual Gold Corporation, and for and on behalf of all of the stockholders of Mutual Gold Corporation [3] similarly situate, for that the controlling majority of the directors, trustees, and the majority of the stockholders thereof are not in sympathy with, but opposed to, the institution of this or any suit for the relief from or concerning the matters herein complained of, for which relief is sought in and by this action; that any request for any relief would be idle and without avail, as will hereinafter more fully appear, for which reason no demand has been made by plaintiffs to the board of directors, trustees, or stockholders of Mutual Gold Corporation, for the institution of this suit, or for the relief, or any similar relief, to that sought herein.

#### V.

July 13, 1932, Russell F. Collins and Ben L. Collins entered into a contract with Chandis Securities Company, M. N. Clark and Alice Clark Ryan to purchase certain mining claims situate in Mono County, State of California, on the terms, conditions, and for the considerations stated therein, a copy of which is hereto attached, marked "Exhibit 1", and made a part hereof, and is herein designated as the "purchase contract". The mining

claims therein agreed to be sold are herein designated as the "contract mining claims". July 18, 1932, Russell F. Collins and Ben L. Collins assigned the purchase contract unto Mutual Gold Corporation, and it became vendee, with approval of the vendors. About 1935, M. N. Clark assigned her interest in the purchase contract and in the contract mining claims to Alice Clark Ryan. Alice Clark Ryan and Chandis Securities Company are herein designated as the "owners". The parties later agreed on certain modifications of the purchase contract, copies of which are hereto attached; marked "Exhibit 2", "Exhibit 3" and "Exhibit 4", and [4] made a part hereof. Frank A. Garbutt represented the owners as agent in negotiation of the purchase contract, and in respect to all matters of performance thereof since then.

## VI.

Mutual Gold Corporation, in performance of the purchase contract, expended in excess of the sum of One Hundred Fifty Thousand Dollars (\$150,000) and in so doing erected a stamp mill, did underground excavation work in the development of, and mining, the contract mining claims, and thereby developed ore bodies in excess of one hundred twenty-five thousand (125,000) tons, containing recoverable gold values of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000).



## VII.

September 2, 1938, Mutual Gold Corporation owned (a) the purchase contract and the vendees' interest in the purchase mining claims, (b) the additional mining claims, (c) omitted additional mining claims conveyed by a specific designation, by deed, "Exhibit 15" hereof, and (d) stamp mill, mill and mining machinery, supplies and equipment. All of said assets were then, and still are, of a reasonable value in excess of Two Million Dollars (\$2,000,000). The stamp mill, mill and mining machinery, supplies and equipment, were of the reasonable value of Forty Thousand Dollars (\$40,000). The claims designated as "additional mining claims" were certain unpatented mining claims adjacent to the contract mining claims and were of the reasonable value in excess of Thirty Thousand Dollars (\$30,000). The omitted additional mining claims are specifically designated as Mutual Gold Lode No. 2, Mutual Gold Lode No. 3, Mutual Gold Lode No. 4, [5] Mutual Gold Lode No. 5 and Mutual Gold Lode No. 6, and were of negligible value.

## VIII.

September 2, 1938, and ever since, Mutual Gold Corporation owed about Twenty-five Thousand Dollars (\$25,000) upon open, unsecured accounts then due, and owed on production certificates Thirty Thousand Dollars (\$30,000), not due, payable out of net production receipts accruing from the sale of ores from its mining property or out of the pro-



ceeds of a voluntary or involuntary sale thereof, as set out in the production certificates, a form copy of which is attached hereto, marked "Exhibit 5", and made a part hereof.

### IX.

August 6, 1938, and thereafter, Frank A. Garbutt fraudulently, wrongfully and unlawfully conspired with and prevailed upon the board of directors and executive officers of Mutual Gold Corporation to agree to the transfer of all its assets to a new corporation to be organized for and on behalf of Mutual Gold Corporation, for which Mutual Gold Corporation was to receive fifty per cent, minus one share, and Frank A. Garbutt fifty per cent, plus one share, of all the capital stock of the new corporation, which new corporation was to have no capital or assets, other than the assets of Mutual Gold Corporation, without authorization of the stockholders of Mutual Gold Corporation, and without provision to pay, or care for, the claims of creditors of Mutual Gold Corporation, to evade, circumvent and violate the laws of the State of Washington, to the injury of Mutual Gold Corporation, its stockholders and creditors. The [6] several transactions herein complained of were done and executed to carry out said purposes and objects, and were, and are, in violation of, and void under the laws of the State of Washington.

## X.

August 25, 1938, pursuant thereto, Frank A. Garbutt, without valid cause or justification, wrongfully gave to Mutual Gold Corporation notice of forfeiture of the purchase contract and, while forfeiture was insisted upon, wrongfully, fraudulently and unlawfully prevailed upon the board of directors and executive officers of Mutual Gold Corporation to make on September 2, 1938, an agreement to sell and convey to Frank A. Garbutt, to be later transferred to the proposed new corporation, all of the assets of Mutual Gold Corporation; that a copy of said agreement is hereto attached, marked "Exhibit 6", and made a part hereof. Concurrently therewith, Frank A. Garbutt arranged to advance, and later did advance, the personal expenses of two of said directors, and agreed to, and did, employ one of said directors to work for him in the negotiation for, and execution of, the several contracts and conveyances complained of herein, and in the operation of said mining property, and for said services paid said director compensation pursuant to arrangement previously agreed to, and thereby fraudulently influenced said board of directors to execute the several contracts and conveyances hereby complained of.

## XI.

September 21, 1938, Frank A. Garbutt prevailed upon the board of directors and executive officers of Mutual Gold Corporation illegally, and without consideration, to execute a [7] deed, bill of sale

and assignment of the purchase contract to him, copies of which instruments are hereto attached, marked "Exhibit 7", "Exhibit 8" and "Exhibit 9", and made a part hereof.

XII.

September 22, 1938, Frank A. Garbutt prevailed upon the board of directors and executive officers of Mutual Gold Corporation to enter into an agreement with him, containing identical provisions and terms as that of said agreement of September 2, 1938, "Exhibit 6", with like purpose and intent.

XIII.

October 18, 1938, Frank A. Garbutt caused to be filed in the Office of the Secretary of State of the State of California, articles of incorporation of Log Cabin Mines Company.

XIV.

September 26, 1938, stockholders of Mutual Gold Corporation complained to its board of directors and to Frank A. Garbutt, charging that the contract of September 2, 1938, "Exhibit 6", and the deed, bill of sale and assignment of the purchase contract, "Exhibits 7, 8 and 9", were in violation of the laws of Washington in respect to the transfer of all of the assets of Mutual Gold Corporation in consideration of stock in the proposed new corporation, and had been obtained by Frank A. Garbutt from Mutual Gold Corporation unconscionably by

assertion of claim of forfeiture, by fraud, coercion, and without provision to pay the creditors of Mutual Gold Corporation; said directors, considering said complaint, in conspiracy with Frank A. Garbutt, [8] refused to grant any relief in the premises, but thereafter, because of said objections, and to avoid the force thereof, Frank A. Garbutt assumed and pretended to withdraw from the agreements of September 2, 1938 "Exhibit 6" hereof, and September 22, 1938, and gave notice of such withdrawal to Mutual Gold Corporation. Concurrently therewith the said Frank A. Garbutt wrongfully and unlawfully conspired with and prevailed upon a majority of the board of directors and executive officers of Mutual Gold Corporation to enter into an agreement of date November 1, 1938, with Frank A. Garbutt. The notice of withdrawal and concurrent agreements are hereto attached, marked "Exhibit 10", and made a part hereof. Said agreement lacked a good faith affidavit, and was not filed nor recorded as a mortgage. Frank A. Garbutt and said board of directors intended the notice of withdrawal and concurrent agreement to be of no force or effect; there was no change of possession, nor of the operation of the property.

#### XV.

About December 17, 1938, Frank A. Garbutt wrongfully and unlawfully conspired with, and prevailed upon, a majority of the board of directors and executive officers of Mutual Gold Corporation,

illegally, without any consideration whatever therefor to Mutual Gold Corporation, contrary to the laws and public policy of the State of Washington, and in fraudulent disregard of the rights of Mutual Gold Corporation, its stockholders and creditors, to execute, in writing, a contract with, and between, himself and the aforesaid Log Cabin Mines Company, a copy of which is hereto attached, marked "Exhibit 11", and made a part hereof, and was, and is, unilateral in form and effect, and without, by its terms, any contractual or binding force or effect [9] whatever upon the said Frank A. Garbutt, wherein a purported option was pretended to be given to Log Cabin Mines Company on the terms therein stated, to acquire the aforesaid purchase contract, contract mining claims, additional mining claims, and the personal property, constituting all of the assets of Mutual Gold Corporation.

## XVI.

April 10, 1939, Frank A. Garbutt wrongfully and unlawfully conspired with, and prevailed upon, the board of directors and executive officers of Mutual Gold Corporation to execute a deed and bill of sale to Log Cabin Mines Company of all of its assets, except the omitted additional mining claims, copies of which deed and bill of sale are hereto attached, marked "Exhibit 12" and "Exhibit 13" and made a part hereof, and assignment of the purchase contract.



## XVII.

April 17, 1939, Frank A. Garbutt prevailed upon the board of directors and executive officers of Mutual Gold Corporation, on behalf of Mutual Gold Corporation, to subscribe for all of the capital stock of Log Cabin Mines Company, and in form he loaned Mutual Gold Corporation the sum of Ten Thousand Dollars (\$10,000) to pay said subscription, and contemporaneously therewith he caused Lob Cabin Mines Company to appoint him manager and treasurer of Log Cabin Mines Company and, as such, gave him control of said Ten Thousand Dollars (\$10,000), which amount Mutual Gold Corporation and Log Cabin Mines Company agreed to repay to him. Five thousand one (5,001) shares of the stock of Log Cabin Mines Company were thereupon issued to Frank A. Garbutt, as owner, and [10] *and* four thousand nine hundred ninety-nine (4,999) shares thereof were issued to Mutual Gold Corporation, but pledged to Frank A. Garbutt to secure the purported loan of Ten Thousand Dollars (\$10,000).

## XVIII.

July 21, 1939, in furtherance, and as a step in the consummation of the aforesaid fraudulent purpose and plan, without any consideration whatsoever therefor moving to Mutual Gold Corporation, its stockholders or creditors, illegally and in fraudulent disregard of the rights of Mutual Gold Corporation, its stockholders and creditors, Frank A.

Garbutt, with the knowledge and approval of the owners, executed a deed purporting to convey to Log Cabin Mines Company the property purported to have been conveyed to him by Mutual Gold Corporation by the deed, assignment and bill of sale which bear date September 21, 1938, "Exhibits 7, 8 and 9" hereof, reserving therefrom the accumulated tailings from milling and processing in past years, all with the knowledge and approval of the owners, a copy of which deed is hereto attached, marked "Exhibit 14", and made a part hereof.

XIX.

August 9, 1939, Frank A. Garbutt prevailed upon the board of directors and executive officers of Mutual Gold Corporation to execute a deed of said omitted additional mining claims to Log Cabin Mines Company, a copy of which is hereto attached, marked "Exhibit 15," and made a part hereof.

XX.

September 2, 1938, under the contract of that date, [11] "Exhibit 6" hereof, Frank A. Garbutt, with the approval of said board of directors, took possession of the purchase mining claims and all the other assets of Mutual Gold Corporation, and ever since has been, and is now, in possession thereof, and has operated all of said property as the purported manager of the property of Mutual Gold Corporation. During that period he has mined and removed from the contract mining claims, and

wrongfully reduced and converted to his own use, large quantities of valuable mineral extracted from the ores therefrom, the value of which is large and substantial, but the amount is not known to plaintiffs; that Frank A. Garbutt, unless restrained by order of this court, will, and he threatens to, continue the mining, removal, reduction and conversion of the ores of said mine, and will continue to do so, all to the great and irreparable loss of Mutual Gold Corporation.

## XXI.

Each of the contracts, deeds, bills of sale and assignments were executed, and the said acts of Mutual Gold Corporation, Frank A. Garbutt and Log Cabin Mines Company were done, with the knowledge and approval of the owners, pursuant to, and as a part of said unlawful conspiracy to transfer all of the assets of Mutual Gold Corporation to Log Cabin Mines Company, without consideration, for a minority stock interest in Log Cabin Mines Company, without authorization by, or approval of, the stockholders of Mutual Gold Corporation, and with the disapproval of nearly one-third of the stockholders of Mutual Gold Corporation, and were, and are, severally ultra vires the corporate powers of Mutual Gold Corporation, in excess of the powers of the board of directors and executive officers of Mutual [12] Gold Corporation, in that no meeting of stockholders of Mutual Gold Corporation was ever called or held, nor any action taken by unani-



mous vote, or any vote of the stockholders, or any number of stockholders of Mutual Gold Corporation, or otherwise, in authorization thereof, or to organize Log Cabin Mines Company, transfer the assets of Mutual Gold Corporation to Log Cabin Mines Company for a stock interest, or any interest, minority or otherwise, in and of Log Cabin Mines Company; that each and every of said contracts, deeds, bills of sale and assignments were, and are, in violation of the laws of the State of Washington and of the State of California, and all thereof were executed, and said acts were done, with the knowledge and approval of the owners, in order to deprive Mutual Gold Corporation of all of its assets, and receive in return a minority stock interest in Log Cabin Mines Company, and with the intent to deprive Mutual Gold Corporation of the exercise of its corporate powers and rights under the laws of the State of Washington, and vest in Frank A. Garbutt as the agent of the owners, the exclusive power and discretion of performance and non-performance of the purchase contract, and cause Mutual Gold Corporation to be remediless in the premises except at the will and discretion of Frank A. Garbutt.

## XXII.

The installment of Ten Thousand Dollars (\$10,000) due on the purchase contract November 1, 1939 has not been paid; that Frank A. Garbutt, personally, and as manager and treasurer of Log Cabin Mines Company, has withheld, failed to ac-

count for, or apply, the royalties from operation on the purchase contract, to pay, so far as may be, said installment. The owners have at all times since September 2, 1938, wrongfully refused to recognize [13] Mutual Gold Corporation as the owner of the purchase contract. Whereupon plaintiffs, as such stockholders of Mutual Gold Corporation, and in its behalf, hereby offer to pay the amount of said installment to keep the purchase contract in good standing as the property of Mutual Gold Corporation, and, upon such payment, be subrogated to all the rights of the owners in respect to said installment.

### XXIII.

The directors of Mutual Gold Corporation called a special stockholders' meeting for September 24, 1938 to ratify or disapprove the contract of September 2, 1938 "Exhibit 6" hereof. The call was rescinded about September 19, 1938 on account of opposition of stockholders to said transactions. Thereupon the board of directors caused the conveyances of September 21, 1938 above referred to, to be executed. September 24, 1938, stockholders in opposition to the transactions here under attack organized a stockholders' protective committee, representing about five hundred thousand (500,000) shares of stock, all opposed to said transactions; plaintiffs sue herein on behalf of all stockholders similarly situate, including the stockholders represented by said protective committee.

## XXIV.

The directors of Mutual Gold Corporation are seven in number, two only of whom have opposed, and still oppose, the several acts, agreements and conveyances herein complained of. The president of Mutual Gold Corporation is one of the five members who caused to be done the several acts, and executed the several agreements and conveyances herein complained of. Said [14] five directors constitute the controlling majority of the board of directors of Mutual Gold Corporation and are designated herein as the board of directors.

Ever since August 6, 1938, not less than five out of seven of the directors of Mutual Gold Corporation have been firmly committed to do, and have done, the several acts herein complained of, and executed the several agreements and conveyances aforesaid. At several meetings of the directors the plaintiffs and stockholders similarly situate have protested against, and complained of, said several acts, agreements and conveyances, but all of said protests and complaints have been ignored and denied, and the board of directors and executive officers have, notwithstanding said protests and complaints, proceeded to do and have done and consummated the several acts, agreements and conveyances herein complained of.

At the annual meeting of the stockholders of Mutual Gold Corporation, held February 1, 1939, said board of directors and executive officers, without

previous notice or call to the stockholders, caused to be presented a resolution which was adopted by a majority vote of the stockholders of Mutual Gold Corporation, ratifying the agreement of December 17, 1938 and authorizing the board of directors to make any other contracts or conveyances to carry out and perform said agreement of December 17, 1938. That at said meeting stockholders similarly situate as plaintiffs applied for relief, and objected to each and every of said acts, agreements and conveyances that had been made up to that time; by a majority vote of the stockholders said application for relief and protests were denied.

Plaintiffs and other stockholders similarly situate have applied to the president of Mutual Gold Corporation to call a [15] stockholders' meeting to specially consider said acts, agreements and conveyances and to obtain relief therefrom, including the maintenance of this action; the president has refused, and still refuses, to call a stockholders' meeting; at the present time five of the directors of Mutual Gold Corporation are opposed to the maintenance of this action, antagonistic to, not in sympathy with, and opposed to the institution of this, or any, suit or proceeding for the relief sought in this action, or any relief, from or concerning the transactions, matters and things herein complained of, and for which reason any request, formal or otherwise, to the executive officers or to the directors, would be, and is, without avail.

XXV.

The number of shares represented by the plaintiffs herein is less than one-third of all the outstanding stock of Mutual Gold Corporation, and there is no way provided for by the articles of incorporation of Mutual Gold Corporation, or its by-laws, whereby plaintiffs, or any other stockholders opposed to the transactions herein complained of, may obtain relief or action by the corporation, its directors, executive officers or stockholders. That the plaintiffs and the stockholders in sympathy with them are not sufficient in number to compel the calling of a special stockholders' meeting at which relief may be sought.

XXVI.

At all times since April 17, 1939, the directors and executive officers of Log Cabin Mines Company have been residents of the State of California, and absent from the State of Washing- [16] *ington*. Frank A. Garbutt, at all times mentioned in this complaint, and Log Cabin Mines Company, at all times since its incorporation, have each been, and are, residents of the State of California, and absent from the State of Washington. Each of them is unwilling to, and refuses to submit to the jurisdiction of the courts of the State of Washington.

XXVII.

By virtue of the aforesaid acts defendant Mutual Gold Corporation has not, nor have plaintiffs, any



adequate or other remedy at law whereby to obtain redress for, and protection of the rights of, Mutual Gold Corporation, its interest and title in and to the aforesaid mining claims and the ores extracted therefrom, nor for and on account of the aforesaid personal property of defendant Mutual Gold Corporation, and for and on account of which adequate relief can only be furnished by, and obtained in, a court of equity; plaintiffs further allege that they are willing, and hereby offer to do equity in the premises as same may be adjudged, declared and determined by this court, and they are likewise willing, and hereby offer, to abide by and perform any and all requirements and conditions that may be imposed by the court as attendant on, and precedent to the granting of the relief prayed, or to which the court may conclude the plaintiffs and other stockholders and creditors are entitled.

Wherefore, Plaintiffs, on behalf of Mutual Gold Corporation, pray by decree:

First: That the agreements, deeds, bills of sale and assignments of the purchase contract, "Exhibits 6, 7, 8, 9, 10, [17] 11, 12, 13, 14 and 15" be severally adjudged to have been wrongfully, fraudulently and illegally executed, and adjudged void and to be of no force and effect, and all claims of right thereunder terminated.

Second: That the status of Mutual Gold Corporation as vendee, owner, of the purchase contract, be determined; that the accrued royalties

from operation be accounted for and applied, so far as may be, in discharge of the installment of Ten Thousand Dollars (\$10,000) due on the purchase contract November 1, 1939, and that Chandis Securities Company and Alice Clark Ryan be required to recognize Mutual Gold Corporation as vendee, owning the purchase contract, and to accept from these plaintiffs, as stockholders of Mutual Gold Corporation, on its behalf, the unpaid balance of said installment.

Third: That defendant Frank A. Garbutt and Log Cabin Mines Company, a corporation, and each of them, be ordered and required to execute and deliver to defendant Mutual Gold Corporation such and all conveyances and acquittances of the aforesaid premises and personal property as may be found to be, or may at any time become necessary fully to reinvest legal title to said properties in defendant Mutual Gold Corporation, and that said properties be surrendered up and delivered to it. That defendants Frank A. Garbutt and Log Cabin Mines Company, and each of them, be likewise required to make a general accounting with respect to all ores, and the proceeds mined or extracted by them, or either of them, or under his or its authority, from said mining properties, likewise for the proceeds of all ores extracted therefrom by third persons and thereupon and there- [18] after delivered to, and received and disposed of by, defendants Frank A. Garbutt and Log Cabin Mines

Company, or either of them, and likewise that they be required to account for any and all ores extracted from said premises and still remaining in the possession or under the control of defendants.

Fourth: That defendants Frank A. Garbutt and Log Cabin Mines Company, and each of them, be enjoined, restrained and ordered to desist, *pendente lite*, from excavating, extracting or removing ores, or other property of any kind or character, from said lands, and that they be required, *pendente lite*, to abstain and refrain from further, or any mining operations of any character on said premises.

Fifth: That plaintiffs have and recover their costs and disbursements incurred herein, including a reasonable fee for the use and benefit of their attorneys, together with such other further and general relief as to the court may seem equitable, just and appropriate in the premises.

W. H. ABEL

O. C. MOORE

FREDERICK D. ANDERSON

650 Subway Terminal Building

Los Angeles, California

MICHIGAN 0804

Attorneys for Plaintiffs [19]

State of Idaho,

County of Kootenai—ss.

M. I. Higgins being first duly sworn, deposes and says: that he is one of the plaintiffs named in



the foregoing bill of complaint, and that he makes this verification on his own behalf and on behalf of his co-plaintiffs; that he is familiar with the contents of said bill of complaint and that the matters and things therein contained are true in substance and in fact.

MILTON I. HIGGENS

Subscribed and sworn to before me this 14 day of December, 1939.

(Seal) J. WARD ARNEY

Notary Public in and for the State of Idaho, residing at Couer d'Alene; My commission expires 11-1-43. [20]

### Exhibit 1

This Agreement of Sale made this 13th day of July, 1932, by and between the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, of Los Angeles, California, hereinafter designated as the Sellers, and Russell F. Collins, of Seattle, Washington, and Ben L. Collins, of Spokane, Washington, hereinafter designated as the Buyers, witnesseth:

That for and in consideration of the payments to be made by the Buyers to the Sellers at the times and in the manner herein specified, and in consideration of the promises and agreements to be well and truly performed by the said Buyers, the said

Sellers hereby agree to sell to the said Buyers the following described patented and unpatented lode mining claims situate in Mono County, California, and more particularly described as follows, to-wit:

Log Cabin	Mill Site
Log Cabin No. 1	New Year No. 2
Log Cabin No. 2	Federal No. 1
Log Cabin No. 3	Federal No. 2
Log Cabin No. 4	Federal No. 3
Log Cabin No. 5	Log Cabin Annex
Log Cabin No. 6	Tamarack
Log Cabin No. 7	Oro
Log Cabin No. 8	Burke Fraction

All of the above described claims having been recorded at one time or another at Bridgeport, Mono County, California, in what has been known at various times as the Mono Lake Mining District, the Bridgeport Mining District and the Homer Mining District.

And also such water rights as the said Sellers may own in connection therewith.

The condition of the titles to said property is as follows:

Log Cabin claims, Log Cabin No. 2, Log Cabin No. 6 and Log Cabin No. 7 are patented. [21]

Log Cabin Annex is a mining location filed recently at Bridgeport by H. R. Bradley and deeded by H. R. Bradley and wife to the Sellers herein.

Claims Log Cabin, Log Cabin No. 1, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 4, and Log

Cabin No. 6 are mining locations and in the option of the Sellers can be patented at any time.

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It is stated by James Simpson that claims New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Tamarack, Oro and Burke Fraction have all had the assessment work done on them and title to them is in good condition.

The Sellers or their immediate predecessors in interest have located these claims and have held title thereto for approximately twenty (20) years and believe their titles to be good and they hereby represent that there are no mortgages, indebtedness or other encumbrance against said claims of which they have any knowledge, but they expressly disclaim any liability for these titles, and the Buyers, having been afforded an ample opportunity to examine same, hereby accept said titles, it being distinctly understood that the only estate to be conveyed hereunder is all of the right, title and interest which the said Sellers may have or may hereafter acquire thereto.

This agreement of sale is to extend for a period of five (5) years from the date hereof unless sooner forfeited or terminated as hereinafter provided. Under this agreement the said Buyers shall have the right of Possession with the right to mine and develop said properties or any of them, including the right to follow and explore by proper working any vein or veins within said group of claims to

the limit or exterior [22] boundary lines thereof, to the same extent and no other as the Sellers, by virtue of their title and interest in said group of claims, have or may hereafter acquire, and to follow any ore shoot or ore body found within the limits of said property in any direction to the same extent as said Sellers might lawfully do, and to break down and remove and mill or sell all commercial ores found therein except as hereinafter expressly provided, to-wit:

It is understood and agreed that until said Sellers have been paid in full for said mining claims, in accordance with the terms hereof, that the ore already exposed above the present drifts on the vein at a depth of approximately 125 feet below the collar of the shaft and within the present extreme north and south faces shall remain intact and unless expressly permitted by permission in writing from said Sellers none of this ore shall be mined or removed from the mine and neither shall any ore at present on the dump be removed or milled by said Buyers.

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In consideration of the agreements herein contained the said Buyers covenant and agree with said Sellers as follows:

1. To enter upon said mining claims immediately after the execution and delivery of this agreement and after the posting of the notices hereinafter provided to be posted, and agree to work the

same continuously and in good workmanlike and minerlike manner so as to develop said property with due regard for the continuance and preservation of the same as a workable mine in accordance with the covenants herein set forth.

2. The Buyers agree to work at least sixty (60) shifts of one man each of eight (8) hours' duration per month until August 10, 1932, after which date said Buyers agree to work not [23] less than one hundred fifty (150) similar shifts per month of eight (8) hours each during the life of this agreement, it being understood that each shift is to consist of the day's work of one competent miner or its equivalent in value. It is agreed that the excess of 150 shifts per month for any given month is to be credited on work to be performed during the succeeding month or months during each year, but that work during one year is not to be credited to the work to be done in any succeeding year, and that the said Buyers agree that there at all times shall be enough work performed by them to fulfill any work necessary to be performed for assessment purposes.

4. The Buyers agree to install a compressor, pump, machine drills and other necessary equipment to sink the present shaft that is now down one hundred twenty-five (125) feet from the surface to a total depth of two hundred fifty (250) feet or to the point of its intersection with the vein and to drift upon the vein from the point of intersection for a distance of not less than two



hundred (200) feet, and to do any other development work that said Buyers may deem advisable for the development of additional ore.

5. The said Buyers agree to well and sufficiently timber the tunnels, shafts and drifts used, opened or extended by them when necessary in said mining at all points and in accordance with good mining methods and to repair all old timbering in such

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workings and in all existing openings which are now open and which show any mill ore. This work of timbering and retimbering is to be done whenever and wherever it may become necessary for the safety of workmen and ore and for the preservation of said mine as a working mine, and said Buyers agree [24] to fill all stopes with waste after the ores therefrom are removed so as to keep and leave said mine in a safe and proper condition for further development and exploration and in accordance with the usual custom of good miners.

6. The said Buyers agree that the said Sellers may at all times enter, in person or by their duly authorized agents in writing, to inspect said property and any and all parts thereof, and the said Sellers shall have the right to keep one or more representatives at all times upon said property to represent them and to inspect same but always at their own sole cost and expense except that the said Sellers may furnish one representative who shall be a practical miner or a practical mining man, able and willing to work for the said Buyers, performing such

work as may properly be allotted to him, and this representative the said Buyers agree to pay the same wages as they pay to other employees in a similar capacity, it being understood that should the representative so nominated by said Sellers not perform as much useful work as their other similar employees that the said Sellers will either accept reduced pay for him or furnish another representative to take his place.

7. The said Buyers agree to pay for all labor, material and supplies employed or used by them in the development and operation of said mining claims under this agreement, including the payment of all taxes and assessments from and after the date of July 13, 1932, during the term of this agreement, and said Buyers agree not to permit any lienable claims, including such labor, material or supplies, to be filed against said mining property, and agree to save said Sellers harmless therefrom.

[25]

8. The said Buyers agree that before they allow any material, machinery or supplies to be brought upon said property that they will obtain and furnish to the said Sellers a release or waiver from the vendors thereof releasing and waiving any right or rights which said vendors may have to file a lien or liens against the property of the Sellers, and in like manner, before employing any labor therein, will obtain from the employees who are to perform this labor a like release to the end that all laborers, material men or contractors will look solely to the

Buyers and their interest in the property for the payment and will waive any right or claim that they may have against said Sellers or the property herein described owned by them.

9. The said Sellers agree that they will forthwith, upon the signing of this agreement, post or cause to be posted proper notices in conspicuous places upon said property, notifying all persons employed thereon or who furnish material and supplies to the said Buyers therefor that neither said property nor said Sellers will be liable for same or will said property be liable for lien therefor.

10. The said Buyers agree that they will not commence any work upon said property nor order any material therefor until said notices have been posted and that thereafter they will maintain said notices or cause same to be maintained at all times that they are in possession of or are operating said property, and should the said Buyers commence work before said notices are posted or perform any work upon said property while said notices are not maintained thereupon, this agreement shall immediately terminate and cease at the option of the said Sellers.

[26]

11. The said Buyers agree to comply strictly with the Workmen's Compensation or Industrial Insurance Act of the State of California providing casualty insurance for all workmen injured while employed by them in the exploration and development of said mining claims or for any other work



performed by the said Buyers or at their instance during the term of this agreement.

12. After said shaft has been sunk to the intersection of the vein and drifted on for a distance of not less than two hundred (200) feet, if by that time sufficient tonnage of commercial ore is in sight to justify a mill, and, if not, as soon as sufficient tonnage of commercial ore is in sight, the said Buyers agree to build a suitable mill and mill buildings and to install proper milling machinery for the economical and proper milling of said ore and to proceed without delay in a minerlike fashion to mine, mill and market said ores which have

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developed on said property by the operation of said Buyers but especially excepting therefrom all ores hereinbefore referred to in the mine and on the dump as hereinbefore described.

13. The said Buyers expressly agree to impound all mill tailings which assay over One (\$1.00) Dollar per ton to the end that they will be preserved for future treatment.

14. It is understood and agreed by the parties hereto that after the said sinking, drifting and building of a suitable mill are completed and the mine is put on production that Five (\$5.00) per ton is to be allowed to the said Buyers to cover the cost of all mining, milling and marketing and that the Sellers shall receive the balance over Five (\$5.00) Dollars per ton, which amount shall be

applied as received upon the [27] purchase price of said property until it is paid for in full.

Should the Buyers mine and mill any ore which returns less than Five (\$5.00) Dollars per ton net, they shall pay all of the costs thereof over and above the net returns received and this shall not be a charge against the Sellers or against any future returns which they are entitled to receive.

In consideration of the foregoing conditions and the expenditures to be made and the work to be done hereunder by the said Buyers, and in consideration of their faithfully keeping of all of the covenants herein contained, the said Sellers hereby give to the said Buyers the right to purchase all of the above described property for the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars, payable as follows: One Thousand (\$1,000.00) Dollars on or before August 1, 1932; One Thousand (\$1,000.00) Dollars on or before November 1, 1932; One Thousand (\$1,000.00) Dollars on or before January 1, 1933; One Thousand (\$1,000.00) Dollars on or before March 1, 1933; One Thousand (\$1,000.00) Dollars on or before May 1, 1933; One Thousand (\$1,000.00) Dollars on or before July 1, 1933; One Thousand (\$1,000.00) Dollars on or before September 1, 1933; One Thousand (\$1,000.00) Dollars on or before November 1, 1933; One Thousand (\$1,000.00) Dollars on or before January 1, 1934; One Thousand (\$1,000.00) Dollars on or before March 1, 1934; and One Hundred Forty Thousand (\$140,000.00) Dollars on or before five (5) years

from date hereof, it being understood and agreed that all amounts paid by the said Buyers under the terms of this agreement shall be applied to and credited upon the several installments of the purchase price as they mature and as hereinbefore provided, and that in case said sums shall amount  
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to the full purchase price of said claims to be paid, as hereinbefore provided prior to the expiration of the term of this agreement, or upon full payment of said installments, to the said Sellers, according to the terms of this agreement, then the said Sellers shall execute a good and sufficient deed conveying to the [28] said Buyers all their right, title and interest in and to the lode mining claims, to the water and right of way for flume hereinabove particularly referred to, clear of all encumbrances suffered or permitted by them.

The Buyers may proceed at their own expense to patent at any time they deem advisable any of the unpatented claims of said group in the name of the Sellers. The Sellers agree to cooperate and assist in obtaining such patents.

Time is the essence of this agreement, and it is expressly agreed that in case of any violation by the Buyers of any covenant herein contained, or upon their failure or refusal to carry out or comply with all of the terms and conditions of this agreement (labor strikes, injunction proceedings, or other outside interference, except weather, over which

said Buyers have no control excepted), the Sellers, at their election, may terminate this agreement.

In the event of a default by the said Buyers in performing any of the conditions or covenants herein set forth or should said Buyers default in making any of the payments herein provided for at the times and in the manner specified, the Sellers may, at their option, give notice to said Buyers of the termination of this agreement by depositing such notice in the United States Mail, registered and postage prepaid, addressed to the said Buyers at the mine and at the last known post office address given to said Sellers by said Buyers, and the depositing of said notices and the affidavit by the Sellers or any of them that same have been deposited shall be conclusive proof that the notices were given, and this agreement shall be terminated thereby at the option of the said Sellers.

In the event of a default by the Buyers in the performance [29] of some covenant or condition in itself immaterial and of which default they may be unaware, the Sellers, before giving the notice as above set forth, will notify the said Buyers of the

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default complained of and shall allow them thirty (30) days from the date of giving said notice in which to cure same and remedy said default or defaults so complained of.

In the event of the termination of this agreement by default the said Buyers shall have no claim against the Sellers of any kind or nature or compen-

sation for any labor performed, expenses incurred or services rendered in connection herewith or hereunder, and all machinery, tools and appliances, fast or loose, placed upon said property by them or under this agreement shall remain upon said property as a part thereof and become the property of the said Sellers.

It is understood and agreed that the said Buyers shall have the use of all buildings, machinery and equipment now on said premises but in the event of the termination of this agreement same are to be left in as good repair as they now are; necessary and usual wear and tear excepted.

It is agreed that the said Buyers will not record this agreement until they have paid at least Ten Thousand (\$10,000.00) Dollars thereon, and should said agreement be recorded by them or by any one for or under them prior to the completion of the payments to the amount of Ten Thousand (\$10,000.00) Dollars, such recordation shall, at the option of the said Sellers, immediately terminate this agreement and this option shall be evidenced by the recordation of the declaration of such intention or desire by the said Sellers.

All payments to be made to the said Sellers by the said [30] Buyers hereunder shall be made to their order at the Citizens National Trust and Savings Bank of Los Angeles.

This instrument shall be binding upon the heirs, assigns and successors of the respective parties



hereto but before the said Buyers shall assign same they will notify the said Sellers of such intention and at the time of such assignment will obtain for the Sellers in form satisfactory to them a written agreement in which their assignees accept the same responsibility as the Buyers have hereunder, and said Buyers shall not be relieved from their liability hereunder even in event of an assignment unless specific consent thereto is given in writing by the said Sellers.

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In event of the insolvency of the Buyers or of their successors and assigns, or in the event that proceedings in involuntary bankruptcy are brought against them, said Sellers may, at their option, terminate this lease.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and date first above written.

CHANDIS SECURITIES COMPANY

By (Signed) HARRY CHANDLER,

President.

(Signed) M. N. CLARK

(Signed) ALICE CLARK RYAN

Sellers.

(Signed) RUSSELL F. COLLINS

(Signed) BEN L. COLLINS

Buyers. [31]

State of California,  
County of Los Angeles—ss.

On this 13th day of July A.D., 1932, before me, Rose B. Coidarrens, a notary public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared Harry Chandler, known to me to be the President of Chandis Securities Company, the corporation described in and which executed the above instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Signed) ROSE B. COIDARRENS

My commission expires February 8, 1935.

State of California,  
County of Los Angeles—ss.

On this 13 day of July, A.D., 1932, before me, Rose B. Coidarrens, a notary public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared M. N. Clark, Alice Clark Ryan, Russell F. Collins and Ben L. Collins, known to me to be the persons whose names are subscribed to the above instrument, and acknowledged that they executed the same.



In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Signed) ROSE B. COIDARRENS

My commission expires Feb. 8, 1935. [32]

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### Exhibit "2"

#### Supplemental Agreement

Referring to that certain agreement of sale made July 13, 1932, by and between the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, of Los Angeles, California, hereinafter described as the Sellers and Russell F. Collins of Seattle, Washington and Ben L. Collins, of Spokane, Washington, hereinafter designated as the Buyers, in which the Sellers agree to sell to the Buyers that certain mining property located in Mono County, known as the Lob Cabin property, more particularly described in said agreement which is hereby made a part hereof, said parties agree to and with each other to modify same as follows:

Whereas on page 4, paragraph 4 of said agreement, the Buyers agreed, among other things, to sink the existent vertical shaft from a depth of 125 feet to a total depth of 250 feet or to the point of its intersection with the vein, and

Whereas in the sinking of said shaft the Buyers encountered sufficient water to make the pumping thereof very expensive, and

Whereas they are desirous of substituting other worth therefor, and propose, in lieu of the sinking of said shaft to the said depth, that they run an adit level, which they believe will be not less than 1200 feet in length, from the surface to said vein at or near the point where it would be intersected by said shaft and at a depth to where it will strike the ledge not less than said 250 feet in depth from the surface, and

Whereas the said Sellers are agreeable to this substitution,

Now, Therefore, in consideration of the agreement of said Buyers, and their successors in interest, the Mutual Gold Corporation, that they will run said adit level in accordance with [33] all of the general terms as set forth in said original contract, the Sellers hereby consent that said original contract shall be amended so as to permit the running of said level instead of the sinking of said shaft, and further agree that the Buyers may sink what is known as the North winze on the vein as far as they desire to sink same.

The work upon said adit level shall be carried on upon the same terms and conditions as to the amount of work to be performed as applied to the

sinking of the said shaft.

The sellers agree also that in event the Buyers run the completed adit level as agreed to the point where it intersects said vein that they will extend the time of said contract of July 13, 1932, for an additional period of nine (9) months.

Whereas, further, the Buyers have erected a mill upon said property in the anticipation of the completion of said shaft by or before this time, and

Whereas, further, they are desirous of operating said mill for the purpose of testing same and for the purpose of determining its adaptability to save the values contained in the ore from said property, and

Whereas, under the existing contract of July 13, 1932, they do not have the privilege of milling ore except as therein provided.

Now Therefore, in consideration of the premises and of the covenants and agreements in this modification contained, the said Sellers agree that when desired by the Buyers and on reasonable notice from them in order to enable the Sellers to send a representative to supervise this work, that the Sellers will allow the Buyers to mill enough ore from said property to [34] test said mill but not to exceed an amount, however, necessary to produce gold to the value of approximately \$1000.00, and the Buyers will pay the cost of such representative, which cost shall be his actual expenses and not to exceed \$10.00 per day for such time as he puts in on the property.

In consideration of the above, the Sellers agree

to the substitution of the work of running the adit level to the intersection of the vein in lieu of the sinking of said shaft and the Buyers agree to perform said work in accordance with all of the terms of said contract, which it is agreed between the parties hereto is modified only to the extent of this Supplemental Agreement and otherwise shall remain in full force and effect.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the 28th day of April, 1934.

CHANDIS SECURITIES COMPANY

(Signed) HARRY CHANDLER

President.

M. N. CLARK

ALICE CLARK RYAN

Sellers.

RUSSELL F. COLLINS

BEN L. COLLINS

Buyers.

MUTUAL GOLD CORPORATION

By RUSSELL F. COLLINS

President

Successors in interest to the Buyers.

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## Exhibit "3"

This Agreement, made and entered into this 29th day of August, 1936, by and between Mutual Gold Corporation, a corporation, party of the first part, and J. A. Vance, party of the second part, Witnesseth:

That Whereas, the party of first part is contemplating the raising of approximately the sum of \$30,000 to place its mining property, located near Mono Lake, California, in operation; and

Whereas, the party of the second part has agreed to assist in the raising of said amount to the extent which he has heretofore advised the board of directors of the party of the first part; and

Whereas, the party of the first part has agreed, if said fund is raised, the party of the second part shall serve as general manager under certain terms and conditions; now, therefore,

It Is Agreed as follows, to-wit:

That the party of the second part is hereby employed as general manager of the party of the first part, with full and complete authority for and on behalf of the party of the first part to expend the sum of \$30,000 to place the mine of the party of the first part in production and to pay such obligations which shall have been incurred by the company in connection with said property during the months of August and September, 1936.

That the party of the second part shall remain as general manager of the property of the first part



after the said mine shall have been placed in production and during the operation of said mine until such time as the said sum of \$30,000 shall have been fully repaid to parties advancing said funds to the [36] party of the first part, in accordance with the terms of such agreement as shall be made by first party with parties advancing said funds.

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That the party of the second part shall serve without any compensation whatsoever, except that he shall be entitled to full reimbursement for all expenses which he shall incur in connection with his position as general manager, which said expenses shall be paid monthly.

That party of the second part shall employ M. J. Keiley as a mining engineer upon said property if he is able to make satisfactory arrangements with him; but if not, party of the second part shall have the right to employ such mining engineer as he may select with the approval of the board of directors of the first party.

That in the event of the death, resignation or inability of the party of the second part to act as the general manager, those subscribing for the said sum of \$30,000 shall have the right to designate a new general manager and the party of the first part agrees to employ such general manager as may be designated; and in connection with the designation of such general manager, if those raising said funds are unable to agree in the selection of the general

manager, those advancing a majority in amount of the funds shall have the right to designate the new general manager to be appointed in the place and stead of the said party of the second part.

That the said funds so raised for the purpose of placing the said mine in production shall be placed in a special fund of said corporation and may be withdrawn only upon the check of the party of the second part for and on behalf of said [37] corporation, or such other party as the party of the second part may designate; but in the event the party of the second part shall designate any other person, except G. F. Ferbert or such other party as may be suitable to first party, to withdraw said funds, the party of the second part shall be responsible for the withdrawal thereof.

(page) —2—

That the party of the second part shall incur no personal liability for any matter or thing whatever which he may do for and on behalf of this corporation while acting under the terms of this contract, and as general manager of said corporation, and shall incur no personal liability for any contracts or obligation which he may incur for and on behalf of the party of the first part, while acting as general manager of the party of the first part, nor shall second party be liable for any mistakes or errors in judgment or any omissions of any character while acting as general manager of first party as herein provided.



In Witness Whereof, we have hereunto set out hands and seals the day and year in this instrument first above written.

MUTUAL GOLD  
CORPORATION

By J. E. STIEGLER, President

Attest: E. FUSON, Secy.

First Party

J. A. VANCE

Second Party

The foregoing contract is hereby approved by the following as directors of Mutual Gold Corporation, a corporation:

J. E. STIEGLER

W. L. GRILL

RUSSELL F. COLLINS

J. A. VANCE

R. P. WOODWORTH

FRED P. FREEMAN [38]

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EXHIBIT "4"

Referring to that certain agreement made the 13th day of July, 1932, by and between the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, therein designated as the Sellers in which agreement said Sellers agree to sell to Russell F.

Collins and Ben L. Collins, designated therein as the Buyers, that certain property known as the Log Cabin Mines situated in Mono County, California, and more particularly described in said agreement, which said agreement for the purposes herein is hereby made a part hereof, and which said agreement was, with the consent of the Sellers, assigned to and assumed by Mutual Gold Corporation: and;

Referring to that certain Supplemental Agreement made April 28, 1934, by and between the same parties.

The same are hereby modified and amended as follows this 9th day of October, 1936.

For and in consideration of the undertaking and agreement by the Mutual Gold Corporation, the assignee of said Buyers to spend upon said property the additional sum of Thirty Thousand (\$30,000.) Dollars under the direction of said Mutual Gold Corporation, as hereinafter set forth, the Chandis Securities Company and Alice Clark Ryan, for herself and as assignee of M. N. Clark, hereby agree to and with the Mutual Gold Corporation to modify said agreement as follows:

The Sellers will allow to the corporation the sum of Eight (\$8.00) Dollars per ton to pay the expenses of mining and milling all ore taken out in development work below the ore reserved in the contract of July 13, 1932, down to the drifts existing on that date, approximately one hundred Twenty Five (125) feet below the collar of the present

main working shaft and within the extreme North and South faces as they existed on the 13th [39] day of July, 1932, provided that this work consists of raises and levels and that the raises are not closer to each other than two hundred (200) feet and the levels are not closer than one hundred (100) feet to each other, and

Provided further, that all receipts in excess of Eight (\$8.00) Dollars per ton from mining and milling of said ores from this work shall be paid to the Sellers to apply upon the purchase price  
(page) -1-

hereunder, and under said original contract of July 13, 1932, and

Provided further, that the corporation may, as provided in the original contract, mill any other ore outside of the herein described area, and should said corporation mill or mine any such, the allowance for mining and milling thereof shall be the same as set forth in the original contract, to-wit, Five (\$5.00) Dollars per ton and that all excess over and above these amounts shall be paid to the Sellers as provided in said contract, and

Provided further, that said Corporation shall not mill any of the ore prohibited in the original contract without the additional written consent of the Sellers being first had and obtained, and

Provided further, that should the aggregate of these payments not amount to the sum of Ten Thousand (\$10,000.00) Dollars on or before Novem-

ber 1, 1937, that the Corporation shall make up any such deficit, and

Provided further, that should said payments from the milling and marketing of ores as aforesaid not amount to Ten Thousand (\$10,000.00) Dollars for the years ending November 1, 1938, November 1, 1939, and November 1, 1940, that the Corporation will in like manner make up such deficit on account of the pur- [40] chase price so that the Sellers will receive the minimum sum of Ten Thousand (\$10,000.00) Dollars during each of said years, and

Provided further, that the remainder of the purchase price shall be payable on or before November 1, 1941.

The Corporation warrants to the Sellers, as a partial consideration for this amendment, that it has on deposit Fifteen Thousand (\$15,000.00) Dollars in the Old National Bank At Spokane, Washington, which money can be drawn only upon the order of J. A. Vance, its general manager, and only for the purpose of carrying on the work aforesaid, and that it has Fifteen Thousand (\$15,000.) Dollars more subscribed for this purpose which will be available upon ten (10) days' call to be used for the same purposes and in the same manner, and that the expenditures of said total of Thirty Thousand (\$30,000.00) Dollars for the purposes as herein set forth, to-wit, mining, milling and developing said property by the Mutual Gold Corporation

under the advice and supervision of capable management is guaranteed by said Corporation.

Should the Mutual Gold Corporation fail to keep any and all of the provisions of this modification agreement, the Corporation may, at its option, terminate same by giving notice to the Sellers of its desire so to do, in which event said original agreement shall stand in all respects as though this modification agreement had not been made.

CHANDIS SECURITIES COMPANY

By HARRY CHANDLER

And

ALICE CLARK RYAN

Sellers

Accepted this 10th day of October, 1936.

MUTUAL GOLD CORPORATION

By J. A. VANCE,

V. Pres. [41]

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EXHIBIT "5"

PRODUCTION CERTIFICATE

No. ..... \$.....

For value received, the undersigned, a Washington Corporation, agrees to pay to ..... the sum of ..... Dollars, without interest, out of net production receipts accruing from the sale of ores from its mining prop-

erty, before any dividends shall be declared or paid by it upon its capital stock, and in no other manner whatsoever, except that in case of a voluntary or involuntary sale of its mining property, any balance unpaid hereon shall be paid out of the proceeds thereof before any distribution shall be made to its stockholders.

“Net Production Receipts” hereinbefore referred to shall be construed to mean such receipts as shall remain after deducting therefrom all of the costs of producing, handling and milling said ore, necessary corporation expenses and taxes, a reasonable sum for mine development, such sum as the Board of Directors shall determine may be necessary for the purchase and/or payment of necessary mining equipment, and payments on account of the purchase price of said mining property by royalty or otherwise.

All sums which the undersigned shall have for the retirement of this and similar certificates shall be applied pro-rata upon the same.

The execution of this certificate has been authorized by resolution of the Board of Directors.

Dated this ..... day of January, 1938.

**MUTUAL GOLD CORPORATION**

By .....

Vice President

Attest:

.....  
Secretary [42]



## EXHIBIT "6"

Memorandum of Agreement between Mutual Gold Corporation organized under the laws of the State of Washington, with its principal place of business at Spokane, and operating solely near Leevining, Mono County, California, hereinafter called the Seller, and Frank A. Garbutt, of Los Angeles, hereinafter called the Buyer, Witnesseth

The Seller, through its duly authorized representatives, states to the Buyer that it requires further equipment to make said property properly profitable as follows:

- |   |             |
|---|-------------|
| 1. Bringing in electric power from Leevining or Tiago Lodge, 2½ miles.....                          | \$11,000.00 |
| 2. Electric Hoist complete with motor and starter, etc. ....  | 7,000.00    |
| 3. Cage or skip and mine cars.....  | 1,500.00    |
| 4. Ball Mill, 100 tons capacity, including motor, etc. ....   | 7,000.00    |
| 5. Classifier complete .....  | 3,000.00    |
| 6. Cyanide equipment, including tanks, motor and equipment capable of handling 100 tons daily ..... | 25,000.00   |
| 7. 6 inch pipe line, 5000 feet and installation thereof, to carry tailings to impounding dam .....  | 3,000.00    |
| 8. 500 cubic foot compressor, with motor, etc. ....   | 4,000.00    |
| 9. Additional building to house new machinery, including coverage for cyanide tanks.....            | 3,000.00    |
| 10. New bunkhouses and addition to cook house .....   | 1,500.00    |
| 11. Assay office and equipment.....   | 1,000.00    |

12. Enlargement of present ore bins at shaft and mill .....	1,000.00
13. Payroll, truck hauling, cement, sand, etc. for 60 days during installation of above.....	10,000.00
14. Payment due on property Nov. 1, 1938.....	10,000.00
	<hr/>
Total.....	\$84,000.00

[43]

The Seller and Buyer agree to cooperate in investigating and determining whether more suitable milling equipment than that above described and recommended by the Seller can be obtained and if, in the opinion of the Buyer, such proves to be the case, he may, at his option, alter the specifications of the milling equipment accordingly.

The Seller agrees to sell to the Buyer and to forthwith transfer to him the contract owned by it dated July 13, 1932, with the Chandis Securities Company, M. N. Clark and Alice Clark Ryan for the purchase of the Log Cabin Mine and the group of mining claims contiguous thereto, subject to all modifications of said contract, which contract and its modifications are, for purposes of description and otherwise, hereby made a part hereof; included in this sale are all other property, personal and real, belonging to the Seller now on or adjacent or tributary to, or used in connection with said Log Cabin Mine and its group.

The Seller agrees to forthwith transfer its title to said property, real and personal, to Frank A. Garbutt.

In consideration of this agreement and the transfer above set forth, the Buyer agrees to do the following things:

1. Furnish \$10,000. to make the payment due the owners of the Log Cabin Mine November 1st, 1938, before its due date.

2. Organize as soon as possible a corporation of such capital stock as he may desire and forthwith transfer to said corporation all titles received by him hereunder as soon as said Corporation is qualified to hold same, issuing all of its Capital Stock fully paid therefor.

As a part of the consideration for the transfer of said title to it, such corporation shall contemporaneously therewith or immediately thereafter agree that it will not sell or part [44] with the title to any real estate referred to herein nor any part thereof, without either (a) the written consent of the Seller herein; or (b) the vote of a majority of the directors of the corporation duly authorized or approved by its stockholders; or (c) its bankruptcy; or (d) a two-thirds vote of its stockholders; and the By-laws will carry a clause substantially setting forth this condition in the language above and that this provision of the By-laws shall not be amended except by the vote of sixty (60%) per cent of the outstanding stock or a unanimous vote of the entire board of directors.

3. Forthwith transfer one-half of its total authorized Capital Stock less one controlling share,

to the Seller, which stock shall carry with it the right to a full minority representation on the Board of Directors of the corporation to be formed.

4. Furnish additional funds to a minimum of \$100,000, including the above mentioned \$10,000. to said corporation to be formed, as needed by it to equip said Log Cabin Mine with a mill of an estimated capacity of one hundred (100) tons daily or more, a suitable hoist and to bring in electrical power, and for such other equipment and supplies as appear advisable, including payment of taxes and the protection of titles.

5. Take care of all further payments falling due to the owners of said Log Cabin Mine group amounting to \$120,000. in all.

6. Proceed with the work of properly equipping said property as rapidly as conditions will permit unless prevented by weather, strikes or other circumstances not controlled by the Buyer.

7. At the Buyer's option to advance additional funds should [45] such advances, in the opinion of the Buyer, become necessary or advisable.

8. Furnish the Seller with proper and detailed monthly statements of the operations of the Corporation to be formed.

9. The Buyer agrees to cooperate with the Sellers in any reasonable way in protecting its and its stockholders' interest in order that the smallest shall receive benefits proportionate to the largest.

For all advances made by him the Buyer shall

be entitled to be repaid out of any profits or funds available from the operation of said property or sale or other disposition of the property, but not otherwise.

When the Buyer has performed all acts hereinabove set forth which are obligatory hereunder he shall be deemed to have fulfilled this contract and his liability shall cease.

The Buyer may also terminate his liability hereunder at any time after furnishing the first \$10,000 specified herein by notifying the Seller of his desire so to do and by placing his fifty (50%) per cent of the stock plus the one controlling share obtained by the Buyer hereunder, in escrow with the Title Insurance and Trust Company or with any responsible bank selected by the Buyer with irrevocable instructions to deliver it to the Seller whenever and as soon as the money from net profits or from its dividends or from the Seller sufficient to repay the Buyer has been received by the trustee for the benefit of the Buyer. And should the Buyer (or, in event of his death, his estate) fail from any cause to perform his part of this agreement he hereby agrees to deposit said stock in escrow in the same manner as in this paragraph provided and under the same terms and conditions as though the Buyer were terminating [46] his liability. Should said Buyer withdraw as above or fail to perform his agreement as above provided, the Seller shall have the right to elect a majority of the



board of directors, and such board shall have the right to immediately elect new officers, both conditioned upon (a) the repayment to the Buyer of the monies advanced by him, or (b) the securing of same by a first lien upon the assets of the corporation subject only to its contract of purchase of July 13, 1932, or, at the option of the Buyer he may elect at any time before or while said stock is in escrow to accept in full payment for all money advanced by him such pro rata of said stock as said advances bear to one hundred thousand dollars. While the Buyer retains such control he agrees to vote upon all matters arising as appears to the best interests of the corporation.

It is the intention of both the Seller and Buyer that in event of such withdrawal by the Buyer he shall be entitled to the return of his advances out of profits only or out of funds derived from the sale of said property or from the sale of the stock obtained by the Seller hereunder should the Seller sell the property or stock to third parties after having obtained title thereto by reason of the withdrawal of the Buyer.

This right to repayment shall extend only for such advances as are made in accordance with this contract and the Buyers herein shall not be entitled to repayment for any further or additional advances unless or until he has secured the written approval of the Seller thereto. In computing net profits actual operation expenses only shall be con-



sidered and no charge shall be made on account of officers' salaries, interest or capital expenditures.

[47]

While such stock is in escrow it shall be voted by the Buyer, and its dividends shall go to the Buyer until his advances have been repaid and any dividends received by him shall apply upon such repayment.

The Buyer or his representatives, will consult at all reasonable times with the Seller before making any unusual or extraordinary outlays not contemplated herein and further agrees, insofar as his control of the enterprise is concerned, to use his best judgment in carrying on the operations contemplated.

In witness whereof the said Seller has hereby caused its name to be subscribed by its President thereunto duly authorized by its board of Directors this 2nd day of September, 1938, and its official seal to be affixed, and the said Buyer has hereunto subscribed his name and affixed his seal as of the date aforesaid.

MUTUAL GOLD CORPORATION

By J. E. STEIGLER

FRANK A. GARBUTT [48]

## EXHIBIT "7"

## MINING DEED

This Indenture, Made this 21st day of September, A.D. 1938 between Mutual Gold Corporation, a corporation authorized to do business in the State of California as a foreign corporation of the County of ..... and State of ..... party of the first part, and Frank A. Garbutt of the County of Los Angeles and State of California, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of One and no/100ths (\$1.00) and other valuable considerations Dollars Gold Coin of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has Granted, Bargained, Sold, Remised, Released, and forever Quit-claimed, and by these presents does Grant, Bargain, Sell, Remise, Release and forever Quit-Claim unto the said party of the second part, his heirs and assigns, the following lode mine claims as located, surveyed, recorded and held by said part... of the first part, Log Cabin, Log Cabin #1, Log Cabin #2, Log Cabin #3, Log Cabin #4, Log Cabin #5, Log Cabin #6, Log Cabin #7, Log Cabin #8, Millsite, New Year #2, Federal #1, Federal #2, Log Cabin Annex, Tamarack, Oro, Burke Fraction, Summit Extension, Summit Extension #1, Summit Extension #2, Summit Extension #3, Summit Extension #4, Summit Extension #5, Lakeview, Lakeview #1, Lakeview #2, Lakeview #3, Gunsight, Gun-

sight #1, Gunsight #2, Gunsight #3, Timber Slope, Contact, Contact #1, Mutual Gold Lode, Mutual Gold Lode #1, Dome and Dome #1. in ..... Mining District, Mono County, State of California, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the [49] tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In testimony whereof, the said party of the first part has hereunto set its hand and seals the day and year first above written.

Signed, sealed and delivered in the presence of

MUTUAL GOLD CORPORATION,

a corporation

By J. E. STEIGLER,

President.

Attest:

E. FUSON,

Secretary

State of Washington,  
County of Yakima—ss.

I, the undersigned, a notary public in and for the above named County and State, do hereby certify that on the 22 day of September, 1938, personally appeared before me, J. E. Stiegler, to me known to be the President of the Corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and he on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Notarial Seal)

A. M. OTTO

Notary Public in and for the State of Washington,  
residing at Natches. [50]

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EXHIBIT "8"

ASSIGNMENT OF CONTRACT

Know all men by these presents that in consideration of the sum of One Dollar and other valuable considerations in hand paid, receipt of which is here-

by acknowledged, Mutual Gold Corporation, a corporation, authorized to do business as a foreign corporation in the State of California, do hereby sell, assign, transfer and set over unto Frank A. Garbutt all of its right, title and interest in and to that certain contract dated July 13, 1932, between Chandis Securities Company, M. N. Clark and Alice Clark Ryan as the Sellers and Russell F. Collins and Ben L. Collins as the Buyers, together with all modifications and agreements supplemental thereto.

In witness whereof the assignee herein hereunto sign same by its duly authorized officers and affixes the corporate seal the day and year first above written Sept. 21, 1938.

MUTUAL GOLD CORPORATION,  
a corporation

By J. E. STEIGLER  
President

Attest:

E. FUSON  
Secretary

State of Washington,  
County of Yakima—ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this ..... day of September, 1938, personally appeared before me J. E. Steigler to me known to be the President of the corporation that

executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and he on oath stated that he was authorized to [51] execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

A. M. OTTO

Notary Public in and for the State of Washington,  
residing at Natches. [52]

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EXHIBIT "9"

BILL OF SALE

Know all men by these presents, that Mutual Gold Corporation, a corporation, authorized to do business in the State of California, as a foreign corporation, the party of the first part, for and in consideration of the sum of One and no/100ths (\$1.00) and other valuable considerations Dollars, to it in hand paid by Frank A. Garbutt the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, his executors, administrators and assigns, the following described personal property,



located and being in County of Mono, State of California, to-wit:

All of the mining machinery, tools and equipment of every kind and character belonging to the party of the first part, together with all supplies of every nature belonging to said first party, also the following automotive equipment:

One Chevrolet 1½ ton truck, Motor  
#T-3783707

One Chevrolet 1½ ton truck, Motor  
#T-4480353

One Dodge 3 ton panel body truck Motor  
#GB-20184, Ser. #113491

One Ford Closed Cab pick-up truck Motor  
#1391644

To have and to hold the same to the said party of the second part, his executors, administrators and assigns, forever.

And Mutual Gold Corporation, a corporation does for its heirs, executors and administrators, covenant and agree to and with the said party of the second part, his executors, administrators and assigns, to warrant and defend the sale of such property, goods and chattels hereby made unto the said party of the second part, his executors, and assigns, against all and every persons whomsoever, lawfully claiming or to claim the same. [53]

In testimony whereof, we have hereunto set our hands and seals the 22 day of Sept. in the year of our Lord, one thousand nine hundred and 38.

(Cor. Seal)

MUTUAL GOLD CORPORATION,  
a corporation

By J. E. STEIGLER  
President

and

E. FUSON  
Secretary

Signed, Sealed and Delivered in presence of

.....

State of Washington,  
County of Yakima—ss.

On this 22 day of September, 1938, before me, a Notary Public in and for the above named County and State, personally appeared J. E. Steigler to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]      A. M. OTTO

Notary Public in and for the State of Washington,  
residing at Natches.

No. 988    State of California  
          County of Mono—ss.

Filed for record at request of David E. Hinckle  
on the 7th day of Nov. 1938 at 55 minutes past 9  
A. M.

GEO. C. DELURY, JR.,  
County Recorder  
By GRACE J. BRANDON  
Deputy

Recorded in Book 14, page 322, Official Records.  
[54]

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Exhibit "10"

Los Angeles, Cal., Oct. 31, 1938

Mutual Gold Corporation:

Referring to that certain contract entered into with you on September 2, 1938, and again upon September 22, 1938 I hereby withdraw from same as it is therein provided that I may do and I also elect to, and do hereby terminate my liability thereunder.

I have fully performed my part of said contract to date and admit and agree that you likewise will have wholly performed said contract on your part as soon as you give me the security contemplated therein.

If you are in accord, I suggest that, in addition to this formal notice which terminates said contract, we enter into the following agreement to terminate same by mutual consent.

FRANK A. GARBUTT

Receipt of the foregoing notice is hereby acknowledged and accepted as of the date hereof, October 31, 1938.

MUTUAL GOLD  
CORPORATION

By W. L. GRILL  
G. H. FERBERT

This Agreement Made this 1st day of November, 1938, by and between the Mutual Gold Corporation, a corporation organized under the laws of the State of Washington, the Party of the First Part, and Frank A. Garbutt, of Los Angeles, California, the party of the Second Part, Witnesseth:

That For and in Consideration of the sum of \$10.00 mutually in hand paid, the receipt of which is hereby acknowledged, and [55] in consideration of the mutual promises and agreements hereinafter contained, the parties hereto do hereby agree to and with each other as follows, to-wit:

1. Both parties agree that the certain contract entered into by them on September 2 and September 22, 1938, is hereby by mutual consent, abrogated, terminated and ended as fully and completely as if it had never been entered into and that the same is and shall be of no further force and effect, and that neither party thereto shall hereafter take any benefit or benefits therefrom or incur any liability thereunder, thereby or therefrom, and each of the parties hereto, hereby releases the other from any claim or claims thereunder of every name or nature whatsoever.

2. The party of the second part has advanced, and contracted with third parties to advance certain sums of money for the benefit of the first party, including \$11,000 for the construction of a power line, the purchase of certain machinery, the payment of wages, etc., all of which has been or will be evidenced by proper vouchers or other satisfactory proof.

3. The party of the second part further agrees, upon demand, to advance the additional sum of \$10,000 to make a payment falling due to the owners of the Log Cabin Mines and such additional monies as may be necessary to pay for any machinery, material, supplies, labor or other expenditures heretofore made by the party of the second part or hereafter made by him at his option at the request or with the consent of the party of the first part.

4. The party of the first part agrees that, in con-

sideration for the money advanced and the money to be advanced, it will give to the party of the second part its notes, due one day after date, drawing 6% interest until paid, and that the party of the second part may and shall hold title to the real and [56] personal property heretofore conveyed to him by said party of the first part in trust as security for the payment of said notes.

5. The party of the second part hereby acknowledges that he holds the titles to the real estate and personal property heretofore conveyed to him by the party of the first part, in trust for the benefit of said party of the first part but subject to and as security for the repayment to the party of the second part of the monies advanced and to be advanced by him for the benefit of said party of the first part and/or for the benefit of the said property which consists of what is known as the Log Cabin Mines and the machinery, equipment and tools thereon, both fast and loose, which property is more fully described in the documents of transfer heretofore made by the party of the first part to the party of the second part, reference thereto being had and which are hereby made a part hereof for all purposes of this agreement.

6. Should the party of the first part organize or cause to be organized or acquire a Corporation to take over and hold said property in which corporation it owns all of the Capital Stock, the party of the second part will, on demand, transfer said property subject to his claim against it to such corpora-



tion, and accept contemporaneously therewith a pledge of all of its stock as security for his said notes and immediately thereafter, and as soon as possible said party of the first part will execute and deliver to the party of the second part such documents as may be necessary, proper and sufficient to evidence and establish said indebtedness of record.

In Witness Whereof the parties hereto have hereunto set their hands and affixed their seals the year and day first above written.

MUTUAL GOLD  
CORPORATION

By W. L. GRILL

And G. H. FERBERT

FRANK A. GARBUTT [57]

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EXHIBIT "11"

This Agreement, made and entered into as of the 17th day of December, 1938, by and between Mutual Gold Corporation, organized and existing under the laws of the State of Washington and authorized to do business in California, hereinafter called the Party of the First Part, Frank A. Garbutt, of Los Angeles, California, hereinafter called the Party of the Second Part, and Log Cabin Mines Company, a California corporation, hereinafter called the Party of the Third Part, Witnesseth:

That Whereas, heretofore, to-wit, upon September 2nd and again upon September 22nd the First Party entered into an agreement with Second Party relating to the developing and equipping of the Log Cabin group of mines and mining claims located near Leevining, Mono County, California, and held by First Party under a certain contract to purchase from the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, dated July 13, 1932, together with all existing modifications of said contract, which, with its modifications, is hereinafter designated as the contract, in which the property that is the subject of this agreement is fully described, and which said contract for the purpose of description and for all other purposes of this agreement is hereby made a part hereof; and

Whereas, under said agreements of September 2nd and/or September 22nd the First Party did transfer to Second Party said contract together with all other real property owned and controlled by it in that locality, and all of its machinery, tools and personal property used in connection therewith, (all of said real property and interests therein and said personal property being hereinafter designated as the property); and

Whereas, said transfer, while absolute in its terms, was in trust nevertheless, for the purposes of said agreements of [58] September 2nd and 22nd and particularly for the purpose of facilitating and insuring the transfer of said contract and

said property to a corporation to be formed; and

Whereas, before the formation of such corporation the Second Party elected to withdraw from said contracts of September 2nd and 22nd as therein provided and terminate his liability thereunder and upon October 31, 1938, did in writing, so withdraw, having fully fulfilled his obligations up to the time of said withdrawal; and

Whereas, thereafter, to-wit: upon the 1st day of November, 1938, the First Party entered into an agreement with Second Party agreeing that such withdrawal should be by mutual consent and fixing the status of the parties, which said agreement of November 1 is hereby made a part hereof; and

Whereas, the First Party was reluctant to have the Second Party withdraw and is desirous of continuing the association and the Second Party is willing to do so upon terms offered by First Party which are similar to, and substantially accomplished the same results contemplated in said contracts which have been terminated but in a different way more satisfactory to both of the parties hereto; and

Whereas, First Party is the owner of said contract and said property, subject to future payments to be made to the sellers thereof, and subject to the indebtedness owing to the Party of the Second Part; and

Whereas, First Party is without funds to equip and develop said property and is desirous that the

same be done without any unnecessary delay; and

Whereas, First Party believes that said property should be [59] equipped substantially as follows, at the estimated cost set forth:

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1. Bringing in electric power from Leevining or Tioga Lodge, 2½ miles.....	\$11,000.00
2. Electric hoist complete with motor and starter, etc. ....	7,000.00
3. Cage or skip and mine cars.....	1,500.00
4. Ball mill, 100 tons capacity, including motor, etc. ....	7,000.00
5. Classifier complete .....	3,000.00
6. Cyanide equipment, including tanks, motor and equipment capable of handling 100 tons daily .....	25,000.00
7. 6-inch pipe line, 5,000 feet and installation thereof, to carry tailings to impounding dam .....	3,000.00
8. 500 cubic foot compressor, with motor, etc. ....	4,000.00
9. Additional building to house new machinery, including coverage for cyanide tanks .....	3,000.00
10. New bunkhouse and addition to cook house .....	1,500.00
11. Assay office and equipment.....	1,000.00
12. Enlargement of present ore bins at shaft and mill .....	1,000.00
13. Payroll, truck hauling, cement, sand, etc. for 60 days during installation of above.....	10,000.00
14. Payment due on property November 1, 1938 .....	10,000.00

And Whereas, of the above list the Second Party has heretofore furnished the following items or the money therefor, for which First Party is now indebted, to-wit:

1. Electric hoist (plus cost of hauling, foundations and installation, at this time unknown) .....	1,225.00
2. Power Line .....	11,000.00
7. Payments on pipe line (increased to 8-inch)	
8. Compressor (less hauling, foundations and installation) .....	1,600.00
	[60]
13. Payrolls, hauling cement, materials, heaters and other necessary expenses, approximately .....	3,000.00
14. Payment due to owners November 1, 1938	10,000.00

Total, approximately

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And Whereas, the Party of the First Part owns and controls the Party of the Third Part, the Log Cabin Mines Company, a California corporation, with an authorized capital of \$10,000 of a par value of \$1.00 per share;

Now Therefore, in consideration of the premises and in consideration of the sum of Ten (\$10.00) Dollars mutually in hand paid, the receipt whereof is hereby acknowledged, and in consideration of the promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree to and with each other as follows, to-wit:



1. The parties of the First Part and Second Part agree to cooperate in investigating and determining whether more suitable equipment than that above described and recommended by First Party can be obtained, and if, in the opinion of the Second Party such proves to be the case, he may, at his option, alter the specifications of such equipment accordingly.

2. First party agrees to purchase for cash all of the capital stock of the Third Party, which has a permit from the Corporation Commission of California, to sell the same to First Party.

3. First Party agrees to give and does hereby give to Third Party a firm option to purchase said contract and property for the sum of Ten (\$10.00) Dollars and the other benefits herein set forth, subject, however, to any claims, liens or indebtedness owing to Second Party but reserving to First Party [61] from this option the tailings now on a portion of said property below the mill and also reserving from this transfer the surface of the ground upon which said tailings are located and for the purpose of securing this option in event the Third Party exercises same by the majority vote of its Board of Directors, said First Party agrees and does hereby agree, acknowledge and confirm that Second Party holds the titles to said contract and said property, first, as securing the payment to him of all monies advanced or to be advanced by him hereunder and, second, for the purpose of transferring same to Third Party subject to such in-



debtedness if and when Third Party elects to exercise said option.

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4. First Party hereby gives and grants to Second Party a firm option to purchase a majority of the stock, to-wit 5001 shares of the capital stock of Third Party for the total sum of \$5001.00 and in order to protect said Second Party in the right to purchase same, First Party has delivered or has authorized the delivery of said 5001 shares of stock into escrow to be delivered to the Second Party if and when he exercises said option and pays the \$5001.00 specified to be paid therefor by the payment of \$5001.00 to the First Party, or, at the option of Second Party, he may exercise said option by paying or crediting either First or Third Party with said amount of \$5001.00 upon any advances heretofore or hereafter made by Second Party for the benefit of either First or Third Party or for the benefit of said property and/or contract. Second Party may exercise said option at any time prior to the termination of this contract and while said stock is in escrow and until Second Party has been repaid in full, he shall vote [62] said stock as herein otherwise provided.

5. Party of the Second Part agrees to loan or advance to the Party of the Third Part from time to time as or before needed, funds to a minimum of Ninety-five Thousand (\$95,000.00) Dollars, for the protection and development of said property and

the property covered by said contract, and for equipment, as needed by Third Party to equip said Log Cabin Mine with a mill of an estimated capacity of one hundred (100) tons daily or more, as herein set forth, and/or the payment of its debts incurred by or to Second Party, which said minimum of \$95,000.00

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shall include sums for which the Party of the First Part is now obligated to the Party of the Second Part and which said obligation shall, upon the completion of this contract, and the exercise of the option by the Party of the Second Part to purchase said 5001 shares of stock of the Party of the Third Part, cease to be the obligation of the Party of the First Part, and become the obligation of the Party of the Third Part to the Party of the Second Part; said advances to be repaid with interest at the rate of ten (10%) per cent per annum, but said interest in any event not to total more than Five Thousand (\$5,000.00) Dollars, regardless of the time elapsing before the repayment of said advances; and all of said advances, together with said interest, to be payable only out of the first profits or funds available, as and when they accrue and become available from the operations or sale or other disposition of the said Mines, and/or contract and property to be conveyed to and owned by the Party of the Third Part hereunder, but not otherwise to be repaid.

6. That as one of the principal reasons for the

entering [63] into this contract by the parties hereto is the protection of the stockholders and more especially the small stockholders of the First Party, in order that their rights shall be preserved while the property is being developed and placed upon a paying basis for their proportionate benefit, therefore it is further agreed that should the First Party be forced into insolvency or should any creditor or creditors obtain judgment against it or its property which threatens to extinguish the rights of its small stockholders or take their equities from them, then and in such event, anything to the contrary contained herein notwithstanding, the Second Party shall have the option at any time thereafter to declare all monies advanced by him due and payable and proceed to recover the same by due process of law.

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The Second Party agrees:

7. To proceed with the work of properly equipping said property as rapidly as conditions will permit unless prevented by weather, strikes or other circumstances not controlled by the Party of the Second Part.

8. At the option of the Second Party to take care of all further payments to the owners of said Log Cabin Mine group, amounting to \$120,000.00 in all which fall due during the life of this agreement.

9. At the option of the Party of the Second Part to advance additional funds over and above

said minimum of \$95,000.00 should such advances, in the opinion of the Party of the Second Part, become necessary or advisable.

10. The Party of the Third Part hereby agrees, immediately upon the conveyance of said contract and property to it, to execute and deliver to the Party of the Second Part a first lien [64] upon said contract and property, subject to the balance due the owners upon said contract as security for the said advances of the Party of the Second Part made to the Party of the First Part herein, and all further advances thereafter made by the Party of the Second Part to the Party of the Third Part; and the Party of the Third Part further agrees to execute from time to time such documents as are necessary and proper to assure said liens, together with all renewals thereof which may be required from time to time by the Party of the Second Part.

11. The Party of the Second Part may at any time terminate his liability hereunder by notifying the Party of the First Part and said escrow holder, in writing, that he does not desire to proceed further hereunder, and the liability of the Party of the Second Part to make any further advances hereunder, except for debts heretofore incurred by him for the Party of the Third Part, shall immediately cease and terminate; and in the event of such termination, all of said stock belonging to the said Party of the Second Part in the Party of the Third Part, should he

have exercised his option hereunder to purchase same, shall be held by said escrow holder for the benefit of the Party of the First Part and be delivered to it as soon as and whenever all of the advances theretofore made by the Party of the Second Part shall have been repaid to him, plus the total interest charges hereinbefore set forth and the further payment of One (\$1.00) Dollar for the said 5001 shares of the party of the Third Part held in escrow as aforesaid.

12. In the event that the Party of the Second Part shall fail, neglect or refuse to proceed further with the contract or give written notification of his termination of liability here- [65] under, then the Party of the First Part shall have the right to elect a majority of the Board of Directors of the Party of the Third Part and such Board shall have the right to immediately elect new officers of the Party of the Third Part, both conditioned upon the repayment to the Party of the Second Part of the monies advanced by him.

At the option of the Party of the Second Part he may elect at any time before or while said stock is in escrow to accept in full payment for all money advanced by him such pro rata of said stock as said advances and money paid for stock bear to One Hundred Thousand Dollars at which time he may complete said advances then remaining unmade.

13. It is the intention of all of the parties hereto that should the Party of the Second Part withdraw as herein provided or should he fail, neglect



or refuse to proceed further with the contract that he shall be entitled to the return of such advances as he may have made or may make, out of profits only or out of funds derived from the sale of said property or from the sale of the stock obtained by the Party of the First Part hereunder should the Party of the First Part and/or the Party of the Third Part sell the property or stock to third parties after having obtained title thereto by reason of the withdrawal of the Party of the Second Part but notwithstanding such intention and

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in event of such contingencies should the funds derived from the sources above mentioned be insufficient to repay said advances to the Party of the Second Part within the times hereinafter specified, then and in that event the Parties of the First Part and Third Part agree that they will repay to the Party of the Second Part all such advances not in excess of Fifty Thousand [66] (\$50,000.00) Dollars within one (1) year and all advances in excess of Fifty Thousand (\$50,000.00) Dollars within two (2) years thereafter, or after such withdrawal, anything in this contract to the contrary notwithstanding.

In computing net profits actual operating expenses only shall be considered and no charge shall be made on account of officers' salaries, interest or capital expenditures.



14. This right to repayment shall extend only for such advances as are made in accordance with this contract and the Party of the Second Part herein shall not be entitled to repayment for any further or additional advances unless or until he has secured the written approval of the Party of the First Part thereto.

15. The Party of the Second Part, or his representatives, will consult at all reasonable times with the Party of the First Part before making any unusual or extraordinary outlays not contemplated herein, and further agrees, insofar as his control of the enterprise is concerned, to use his best judgment in carrying on the operations contemplated.

16. That while said 5001 shares of the stock of the Party of the Third Part under option to or belonging to the Party of the Second Part is in escrow, as aforesaid, it shall be voted by the Party of the Second Part and all dividends thereon shall be paid to the Party of the Second Part until his advances have been entirely repaid, and any dividends received by the Party of the Second Part shall apply upon such repayment.

While the Party of the Second Part retains the control he agrees to vote upon all matters arising as appears to the best interests of the corporation.

17. That the capital stock of the Party of the Third Part [67] shall not be increased until all of said advances made by the Party of the Second Part are repaid in full.

18. The Party of the Third Part agrees that it will not dispose of its contract or real property, nor any part thereof, without at least one of the following things as a condition precedent thereto, either

(a) The written consent of the Party of the First Part.

(b) The vote of a majority of the directors of the Log Cabin Mines Company, duly authorized or approved by a two-thirds vote of its stockholders.

(c) The bankruptcy of the said Party of the Third Part.

(d) By the unanimous vote of the entire Board of Directors of the Party of the Third Part, duly approved or authorized by a majority of its stockholders.

19. The Party of the Third Part agrees to furnish the Party of the First Part with proper and detailed monthly statements of its operations.

20. The Party of the Third Part agrees that until the advances made by the Party of the Second Part have been repaid in full and until the owners have been paid in full, it will pay no salaries to its officers and directors, and, in any event, it will pay no salaries, bonuses or other emoluments except for actual work done or services performed at their fair value.

21. The Party of the Second Part agrees that after being secured, as provided in paragraph numbered 10, he will, upon the demand of the Party

of the **First Part**, forthwith release any and all liens or claims that he has against the 4999 shares of stock belonging to the Party of the **First Part** in the Party of the **Third Part**. [68]

22. In the event the Party of the **First Part** becomes dissatisfied with the manner in which the Party of the **Second Part** is carrying out this contract it agrees to state to him in

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writing its cause of dissatisfaction and give him ninety (90) days in which to cure same, before taking any action in regard thereto.

23. It is further agreed that the Party of the **Second Part** incur no personal liability hereunder for errors in judgment or for failure to do any thing or perform any act herein set forth to be done or performed.

In Witness Whereof, the Parties of the **First Part** and **Third Part** have caused these presents to be duly executed by their authorized officers and their corporate seals to be hereunto affixed, and the Party of the **Second Part** has hereunto set his hand and seal, the day and year first above written.

[Seal]

MUTUAL GOLD  
CORPORATION

By **J. E. STEIGLER**

President

Attest: **E. FUSON**

Secretary

Party of the **First Part**.

FRANK A. GARBUTT

Party of the Second Part.

LOG CABIN MINES  
COMPANY

By .....

President

Attest: .....

Secretary

Party of the Third Part.

[69]

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EXHIBIT "12"

The consideration for this deed is less than a hundred dollars.

Mining Deed

This Indenture, made this 10th day of April, 1939, between Mutual Gold Corporation, a corporation organized and existing under the laws of the State of Washington and authorized to do business in the State of California, party of the first part, and Log Cabin Mines Company, a corporation organized and existing under the laws of the State of California and having its principal place of business in the County of Los Angeles, State of California, party of the second part,

Witnesseth: that the said party of the first part, for and in consideration of the sum of five dollars (\$5.00) lawful money of the United States to it in

hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit-claimed, and by these premises does grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, and to its successors and assigns, the following lode mining claims situated in the County of Mono, State of California, as said claims are located, surveyed and recorded:

Log Cabin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Millsite, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tamarack, Oro, Burke Fraction, Summit Extension, Summit Extension No. 1, Summit Extension No. 2, Summit Extension No. 3, Summit Extension No. 4, Summit Extension No. 5, Lakeview, Lakeview No. 1, Lakeview No. 2, Lakeview No. 3, Gunsight, Gunsight No. 1, Gunsight No. 2, Gunsight No. 3, Timber Slope, Contact, Contact No. 1, Mutual Gold Lode, Mutual Gold Lode No. 1, Dome, and Dome No. 1.

Together with any and all other claims and real properties owned by said party of the first part in said Mono County, and together with all the dips, spurs, and angles, and also all the metals, ores,



gold and silver-bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances, and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

Reserving, However, to the Party of the First Part from this deed the tailings now on a portion of said property below the mill situated on said property, and also reserving from this deed to the party of the first part the surface of the ground upon which said tailings are located.

In Witness Whereof, the said party of the first part has hereunto set its hand and seal, by its proper officers thereunto duly authorized, on the day and in the year first above written. [71]

[Corporate Seal]                      MUTUAL GOLD  
CORPORATION

By J. E. STIEGLER,  
President

and by C. T. ORR, Secretary



State of Washington

County of Spokane—ss:

I, the undersigned, a Notary Public in and for the above-named county and state, do hereby certify that on this 10th day of April, 1939, personally appeared before me C. T. Orr, to me known to be the secretary of said Mutual Gold Corporation, and they acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and they on oath stated that they were authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial

E. D. WELLER

Seal]

Notary Public in and for the  
State of Washington, residing at  
Spokane.

State of Washington

County of King—ss.

I, the undersigned, a Notary Public in and for the above named county and state, do hereby certify that on this 8th day of April, 1939, personally appeared before me J. T. Stiegler, to me known to be the President of the Mutual Gold Corporation, the corporation that executed the within and fore-

going instrument, and he acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and he on oath stated that he was authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial  
Seal]

A. B. BOWES

Notary Public in and for the  
State of Washington, residing at  
Seattle. [72]

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EXHIBIT "13"

Bill of Sale

Know All Men by These Presents, that Mutual Gold Corporation, a corporation, authorized to do business in the State of California and organized and existing under the laws of the State of Washington, the party of the first part, for and in consideration of the sum of five dollars (\$5.00) to it in hand paid by Log Cabin Mines Company, a corporation organized and existing under the laws of the State of California, the party of the second part, the receipt of which is hereby acknowledged,

does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, the following described personal property located and being in the County of Mono, State of California:

All of the mining machinery, tools, and equipment of every kind and character belonging to the party of the first part, together with all supplies of every nature belonging to said first party, and also the following automobile equipment: One Chevrolet one-and-a-half ton truck, Motor No. T-3783707; one Chevrolet one-and-a-half ton truck, Motor No. T-4480353; one Dodge three-ton panel body truck, Motor No. GB-20184, serial No. S113491; and one Ford Closed Cab pick-up truck, Motor No. 1391644.

To have to and hold the same to the said party of the second part, its successors and assigns, forever.

And Mutual Gold Corporation does, for its successors and assigns, covenant and agree to and with the said party of the second part, its successors and assigns, to warrant and defend the sale of said property, goods, and chattels hereby made unto said party of the first part, its successors and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, said party of the first part has, by its proper officers thereunto duly author-

ized, subscribed its name and affixed its corporate seal on this 10th day of [73] April, 1939.

[Corporate Seal]            MUTUAL GOLD  
                                 CORPORATION

By J. E. STIEGLER  
                                 President

and by C. T. ORR  
                                 Secretary.

State of Washington  
County of Spokane—ss.

On this 10th day of April, 1939, before me, a notary public in and for the above named county and state, personally appeared C. T. Orr, to me known to be the secretary of said Mutual Gold Corporation, and *they* acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that *they* were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]            E. D. WELLER

Notary Public in and for the State of Washington,  
residing at Spokane.

State of Washington  
County of King

On this 8th day of April, 1939, before me, a notary public in and for the above named county and state, personally appeared J. E. Steigler, to me known to be the president of Mutual Gold Corporation, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that [74] he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]

A. P. BOWES

Notary Public in and for the State of Washington,  
residing at Seattle.

No. 157 filed for record at the request of David E. Hinckle Apr. 18, 1939, 30 minutes past 9 o'clock A. M.

GRACE J. BRANDON

County Recorder

Recorded in Book 15, page 31 Official Records.

[75]

## EXHIBIT "14"

## Mining Deed

This Indenture, made this 21st day of July, 1939, between Frank A. Garbutt of the County of Los Angeles, State of California, a single man, party of the first part, and Log Cabin Mines Company, a corporation organized and existing under the laws of the State of California and having its principal place of business in the County of Los Angeles, State of California, party of the second part.

## Witnesseth

That the said party of the first part, for and in consideration of the sum of five dollars (\$5.00) lawful money of the United States to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns the following lode mining claims situated in the County of Mono, State of California, as said claims are located, surveyed and recorded.

Log Cabin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Millsite, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tamarack, Oro, Burke Fraction, Summit Extension, Summit Extension No. 1,



Summit Extension No. 2, Summit Extension No. 3, Summit Extension No. 4, Summit Extension No. 5, Lakeview, Lakeview No. 1, Lakeview No. 2, Lakeview No. 3, Gunsight, Gunsight No. 1, Gunsight No. 2, Gunsight No. 3, Timber Slope, Contact, Contact No. 1, Mutual Gold Lode, Mutual Gold Lode No. 1, Dome and Dome No. 1.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith [76] usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

Reserving, However, to the Party of the First Part from this deed the tailings now on a portion of said property below the mill situated on said property, and reserving also to said party of the

first part from this deed the surface of the ground upon which said tailings are located.

In Witness Whereof, the said party of the first part has hereunto subscribed his name on the day and in the year first above written.

FRANK A. GARBUTT

State of California

County of Los Angeles—ss.

On this 21st day of July, 1939, before me, Althea K. Hinckle, a notary public in and for said county and state, personally appeared Frank A. Garbutt, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Witness my hand and official seal.

[Notarial Seal]            ALTHEA K. HINCKLE.

My commission expires May 20, 1940. [77]

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EXHIBIT "15"

Mining Deed

This Indenture, made this 9th day of August, 1939, between Mutual Gold Corporation, a corporation organized and existing under the laws of the State of Washington and authorized to do business in the State of California, party of the first part, and Log Cabin Mines Company, a corpora-

tion organized and existing under the laws of the State of California and having its principal place of business in the County of Los Angeles, State of California, party of the second part,

Witnesseth:

That the said party of the first part, for and in consideration of the sum of five dollars (\$5.00) lawful money of the United States to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to its successors and assigns, the following lode mining claims situated in the County of Mono, State of California as said claims are located, surveyed, and recorded:

Mutual Gold Lode No. 2, Mutual Gold Lode No. 3, Mutual Gold Lode No. 4, Mutual Gold Lode No. 5, and Mutual Gold Lode No. 6

Together with any and all other claims and real properties owned by said party of the first part in said Mono County, and together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments,

and appurtenances thereunto [78] belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances;

To have and to hold, all and singular, the said premises, together with the appurtenances, and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

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Reserving, However, to the Party of the First Part from this deed any tailings that may be now on any part of said above-mentioned five claims, and also reserving from this deed to the party of the first part such parts, if any, of the surface of said claims as may have said tailings located thereon.

In Witness Whereof, the said party of the first part has hereunto set its hand and seal, by its proper officers thereunto duly authorized, on the day and in the year first above written.

[Corporate Seal]      MUTUAL GOLD  
CORPORATION,

By J. E. STEIGLER

President

and by C. T. ORR

Secretary

State of Washington  
County of Spokane—ss.

I, the undersigned, a notary public in and for the above named county and state, do hereby certify that on this 10th day of August, 1939, personally appeared before me, C. T. Orr, to me known to be the secretary of said Mutual Gold Corporation, and he acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and he on oath stated that he was authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

[79]

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]

E. D. WELLER

Notary Public, residing at Spokane, Wn.

State of Washington  
County of Yakima—ss.

I, the undersigned, a notary public in and for the above named county and state, do hereby certify that on this 9th day of August, 1939, personally appeared before me J. E. Steigler, to me known to be the president of Mutual Gold Corporation, the corporation that executed the within and foregoing instrument, and he acknowledged the said instrument to be the free and voluntary act and deed of

said corporation, for the uses and purposes therein mentioned, and he on oath stated that he was authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal]                      A. M. OTTO

Notary Public in and for the State of Washington,  
residing at Naches.

No. 632. Filed for Record at the request of David F. Hinckle Aug. 17, 1939, 20 minutes past 9 o'clock A. M.

GRACE J. BRANDON

County Recorder.

Recorded in Book 15, page 225 Official Records.

[Endorsed]: Filed Dec. 20, 1939. [80]

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[Title of District Court and Cause.]

BILL OF PARTICULARS.

The plaintiffs, in pursuance to the order of court dated February 19th, 1940, hereby furnish the defendants with the particulars requested in, and by, paragraphs 3, 4, 5, 6, 7 and 8 of defendants' demand, to-wit:



First:

In addition to the averments stated in the complaint, and particularly in Paragraphs IX, XV, X and XVIII thereof, allege that the circumstances constituting the frauds which are the basis of this action are:

(a) August 6th, 1938, G. H. Ferbert and Russell F. Collins, who were then directors of Mutual Gold Corporation, attended a meeting of the stockholders of said corporation at Spokane, Washington, and also a directors' meeting on the same day, at which said meetings, with the consent, approval and authorization of Garbutt, they stated and represented to the stockholders and [87] to the directors that said Garbutt was willing to make a deal with Mutual Gold Corporation that was a better deal than the proposal which had been made by Lloyd J. Vance, and which Vance proposal was in substance, to take care, that is provide for the payment of, all the creditors of Mutual Gold Corporation, and develop the mine referred to in the complaint, for a half interest in said mine. Based on said representations of Ferbert and Collins, the directors' meeting was adjourned to meet August 13, 1938 at Seattle, Washington.

(b) Thereupon, and between August 6th, 1938 and August 13th 1938, Ferbert and Collins went from Spokane to Los Angeles, where they met with Garbutt, and returned with a proposal purporting to be made by, and in the name of, Cecil B. DeMille,

but not signed, a true copy of which is attached hereto as Exhibit "A". Said unsigned proposal was, on August 13th, 1938, submitted to, and at, a meeting of the board of directors of Mutual Gold Corporation by Russell F. Collins, G. H. Ferbert and W. L. Grill, at which meeting all of the directors of the company were present. The substance of such proposal was that the said DeMille was willing to agree that if Mutual Gold would execute a transfer of all of its assets to the said Frank A. Garbutt as trustee, to be delivered to the corporation on the completion thereof, he, DeMille, would form a corporation and execute to Mutual Gold Corporation fifty per cent of said stock, less one share, in full payment for all of its assets.

(c) August 16th, 1938, with the knowledge, consent, approval and authorization of said Garbutt, one M. J. Keily went from Los Angeles to Seattle, where he met certain of the directors of Mutual Gold Corporation. Said meeting was private, and the identity of all of the directors attending said meeting with [88] Keily is not known to the plaintiffs, but included J. E. Steigler and W. L. Grill. Following which, and on or about August 16th, or August 18th, 1938, with the knowledge, consent, approval and authorization of said Garbutt, the said W. L. Grill informed the directors, at a board meeting of Mutual Gold Corporation, that it was necessary to make a deal with Garbutt to transfer the assets of Mutual Gold Corporation unto him in order to save and avoid trouble with the owners in

respect to a claim of right by Garbutt, acting for the owners, to forfeit the contract of purchase, Exhibit "1", contained in the complaint.

(d) Thereafter, on or about August 25th, 1938, the said Frank A. Garbutt caused to be issued a notice and claim of forfeiture of said purchase contract, as set out later in this bill of particulars. On or about August 26th, 1938, the said Frank A. Garbutt phoned from Los Angeles to the said W. L. Grill, at the Vance Hotel in Seattle, that he, on behalf of the owners, insisted upon the forfeiture of the purchase contract for alleged breach thereof, and that he, for the owners, would refuse to accept payment in full of the entire purchase price provided to be paid in said contract, all of which was communicated by the said W. L. Grill to the board of directors of Mutual Gold Corporation, at a meeting held about August 27th, 1938, at which meeting Ferbert and Grill were present, and a resolution was adopted by the votes of Ferbert, Hiccox, Steigler and Grill as follows, to-wit:

Resolved that this corporation accept the offer as embraced in the memorandum of contract prepared and submitted by Frank A. Garbutt, and that the president be and he is hereby authorized to execute the same provided that it be amended to include the following:

1. That the titles to the property of the Mutual Gold Corporation be transferred to the buyer to be held [89] in escrow until the sum of \$100,000.00 shall be paid into the new cor-

poration to be organized to take titles to the said property;

2. That the seller shall, at all times through its stock interest, have a full minority representation on the board of directors of the corporation to be formed;

3. That adequate provision be made by articles, by-laws and otherwise of the new corporation that said new corporation cannot sell its mining properties and equipment without a two-third vote of the stockholders of the company, and that the directors shall not have the authority to make or dispose of said property without the prior approval of two-thirds of the outstanding capital stock of the new corporation;

4. That in the event of the withdrawal by the buyer after it shall have advanced said \$100,000.00 or more, the seller shall have the right to elect a majority of the board of directors and such board shall have the right to immediately elect new officers of the new corporation;

and that suitable provision be made for payment of the open account creditors of the said Mutual Gold Corporation, and further that, in the event that said contract is executed the same be ratified by the stockholders of the company.

(e) Plaintiffs further allege upon information and belief that the said Garbutt caused to be paid the traveling expenses of the said Ferbert and Collins from Spokane to Los Angeles and return therefrom to Seattle, incurred by them during the week following August 6th, 1938. Concurrently therewith, the said Frank A. Garbutt, at times and under particular circumstances known to him and the said directors of Mutual Gold Corporation, did arrange to advance, and later did advance and pay the personal expenses of two of said directors, to-wit: Russell F. Collins and W. L. Grill, and did employ one of said directors, to-wit: Russell F. Collins, on a date unknown to plaintiffs, for services commencing about September 17th, 1938, and continuously thereafter, to work for him in the negotiation for, and execution of the several contracts and conveyances complained of herein, and in the operation of said mining property, and for said ser- [90] vices paid the said Russell F. Collins money, in amounts known to him and to the said Russell F. Collins, but not known to plaintiffs. Also, the said Garbutt paid the traveling expenses of the said Collins for trips to and from Los Angeles and elsewhere in connection with the several negotiations and acts for the procurement and execution of the several contracts, conveyances and deeds under attack in the complaint, and charged the expense of all thereof to Mutual Gold Corporation. That the ledger account of the said Frank A. Garbutt contained items charged to Mutual Gold Corporation



for payments and advances made which included the following:

September 27, 1938	Russell F. Collins Traveling Exp. ....	\$ 50.00
September 20, 1938	Miscellaneous Expense .....	150.00
October 6, 1938	Russell F. Collins services.....	19.25
October 12, 1938	Russell F. Collins Traveling Exp. ....	20.00
October 19, 1938	Russell F. Collins — period ending 10/15 .....	50.00
November 5, 1938	Russell F. Collins, Traveling Exp. ....	129.55
November 17, 1938	Russell F. Collins, Board, Room & Mileage.....	92.89
November 21, 1938	Russell F. Collins, acct. hauling contract .....	35.00
November 25, 1938	Russell F. Collins, hauling machinery and pipe, on acct. ....	20.00
November 25, 1938	Russell F. Collins, hauling machinery balance .....	25.31
January 19, 1939	Russell Collins on account.....	50.00
February 28, 1939	Russell F. Collins Wages.....	20.00

That said item of September 20, 1930, \$150., is listed as miscellaneous expense, whereas in truth and in fact it was paid to W. L. Grill as traveling expenses, and was so admitted, in the presence of Frank A. Garbutt, by Mr. Carter his accountant, at the time of, and in, the deposition of Frank A. Garbutt given on or about August 25th, 1939. That all of said advances were made without any authority by Mutual Gold Corporation or its board of directors, upon the initiation of Frank A. Garbutt, who



thereupon assumed to charge the same upon his ledger account against Mutual Gold. [91]

All of the foregoing were, and are, circumstances and particulars accompanying, and part of, the several frauds which are the basis of complaint in this action, and are in addition to the facts, circumstances and particular conveyances, deeds, bills of sale and contracts executed by and between the said Mutual Gold Corporation, Frank A. Garbutt, Log Cabin Mines Company and the several directors of each of said companies, in consummation of said frauds. All of said circumstances and particulars, which accompanied, constituted and were a part of said frauds as alleged in the complaint, are within the knowledge of the defendants.

### Second:

In response to the fourth demand, to-wit: a more definite statement of what plaintiffs mean by their averment on page 4, lines 10 and 11, that they “developed ore bodies in excess of one hundred twenty-five thousand (125,000) tons”, plaintiffs allege that said averment means that mineralized rock of commercial value to the amount of one hundred twenty-five thousand (125,000) tons had been demonstrated to exist in the place subject to be stoped, excavated and removed from the mine.

### Third:

In response to the fifth demand plaintiffs allege that the names of the persons to whom the alleged

indebtedness mentioned in Paragraph VIII of the complaint was owing, are as follows:

On open accounts about \$1,284.93, to-wit:

Associated Oil Co.....	\$ 8.00
Robert J. Cole.....	175.00
E. Fuson .....	237.60
John W. Graham & Co.....	1.59
	[92]
Thomas R. L. Harris.....	25.00
Hess Garage .....	159.77
L. W. Hutton Estate.....	30.00
Kent & Rusch.....	116.14
Leevining Market .....	153.96
Marshall Letter Co.....	19.81
Pacific Telephone & Telegraph Co.....	2.25
Hazel Riley .....	3.50
Shaw Borden Co.....	1.74
State of California Unemployment.....	53.30
State of Washington Unemployment.....	4.86
Success Printing Co.....	33.15
Tiogo Stores .....	20.83
U. S. Government—Unemployment.....	61.88
U. S. Government—Old Age.....	32.81
Western Union Telegraph Co.....	3.74
H. P. Woodworth.....	140.00
	<hr/>
	\$1,284.93
	<hr/> <hr/>

On Payroll, \$550.44, to-wit:

R. F. Collins.....	\$ 367.50
J. R. Sturgeon.....	182.94
	<hr/>
	\$ 550.44
	<hr/> <hr/>

To Stockholders on open accounts about \$22,785.04, together with accrued interest thereon at 6%, the exact amount of which these plaintiffs are unable to definitely state at this time, to-wit:

G. H. Ferbert.....	\$ 436.90
W. L. Grill.....	77.00
L. E. Keller.....	176.50
J. E. Stiegler.....	3,000.00
F. T. Hiccox.....	100.00
F. O. Straight.....	100.00
J. A. Vance.....	18,592.30
J. A. Vance.....	302.34
	<hr/>
	<u>\$22,785.04</u>

That there was also owing, on production notes, \$1,807. with accrued interest thereon in the approximate amount of \$445.40. Said production notes were then owned and held, as plaintiffs are advised, believe, and therefore allege, by the respective parties in the respective amounts as follows:

Number	Name	Amount
3	H. Robinson .....	\$ 50.00
4	J. B. Rhodes.....	25.00
5	George F. Shiley.....	50.00
6	F. M. Haight.....	3.00
7	Louie Lauer .....	15.00
9	F. Fletcher .....	23.50
		[93]
11	F. S. Compton.....	5.00
15	E. F. Mealey.....	20.00
16	M. A. Gore.....	5.00
20	N. F. Kuhn.....	25.00
24	M. Madsen .....	100.00
25	F. M. Fry.....	5.00
26	Helen M. Lorenz.....	25.00

Number	Name	Amount
28	Chas. P. Jaeger.....	60.00
29	W. N. Appleman.....	5.00
32	S. J. Nerdrum.....	25.00
35	Earl Mayfield .....	60.00
37	M. Freshwater .....	40.00
38	Erich Richter .....	50.00
39	Helen Haefer .....	5.00
44	Evelyn Horning .....	10.00
45	Besse Thomas .....	5.00
46	E. A. Thomas.....	19.00
51	Aylward Machinery Co.....	150.00
53	Gus Hess .....	140.00
54	A. B. Fitschen.....	10.00
55	Dr. P. Remington.....	50.00
58	Chris Mattley .....	15.00
59	R. T. Nelson.....	25.00
62	M. Verwey .....	50.00
65	W. R. Steinbergen.....	35.00
68	Dr. G. R. Ridgeway.....	5.00
69	Robert Jacobson .....	20.00
72	Jack Steenbergen .....	25.00
74	John Peterson .....	115.00
75	Melvin Noland .....	32.50
76	S. J. Nodrum.....	20.00
79	Albert Henderson .....	50.00
80	Evelyn Harrug .....	15.00
81	Louie Lauer .....	35.00
89	Dr. E. T. Richter.....	50.00
92	H. E. Burton.....	25.00
94	H. D. Showalter.....	100.00
97	O. H. Beyers.....	64.00
98	Dr. Chas. E. Butts.....	25.00
99	W. B. Clifton.....	45.00
100	T. Jrijita .....	15.00
102	Minnie Rose .....	10.00
104	G. A. Lukens.....	25.00
107	Awylward Machinery Co.....	25.00

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**\$1,807.00**

There was also owing on production certificates \$30,000. not due, payable out of net production receipts accruing from the sale of ores from its mining property, or out of the profits of a voluntary or involuntary sale thereof, as set out in the production certificates, a form copy of which is hereto attached, Marked Exhibit "B", and made a part hereof, which production [94] certificates were then owned and held, as plaintiffs are advised, believe, and allege, by the following parties in the following respective amounts:

Number	Name	Amount
1	Ross Doty .....	\$ 30.00
2	Nettie Fairfield .....	6.00
3	Al Page .....	501.00
4	Mr. & Mrs. E. J. Griffin.....	3.00
5	F. H. Hess.....	150.00
6	Robt. Jacobson .....	5.00
7	N. F. Kuhn.....	25.00
8	Jim Moore .....	45.00
9	Hidekichi Nishifue .....	75.00
10	Erich Richter .....	30.00
11	Jack W. Robillard.....	3.00
12	C. A. Sparks.....	15.00
13	J. T. Steenbergen.....	20.00
14	Sue Steenbergen .....	20.00
15	Frank B. Totusek.....	12.00
16	Jerome Totusek .....	12.00
17	Mary E. Wall.....	3.00
18	W. G. Peebles.....	1,000.00
19	N. D. Showalter.....	90.00
20	Melvin Noland .....	12.00
21	P. E. Barthen.....	60.00
22	F. M. Campbell.....	200.00
23	Gus Hess .....	100.00
24	John Peterson .....	75.00
25	Louie Lauer .....	27.00

Number	Name	Amount
26	Albert Berry .....	60.00
27	Wilfred Berry .....	60.00
28	Jerome Totusek .....	48.00
29	Robert Jacobson .....	5.00
30	M. R. Stone.....	99.00
31	Cassie Eberle .....	45.00
32	Thos. Cowan .....	30.00
33	Ava B. Colby.....	24.00
34	Israel Martin .....	9.00
35	N. N. Richardson.....	45.00
36	Tillie M. Martin.....	9.00
37	P. J. Lynch.....	300.00
38	Chas. Blank .....	1,002.00
39	F. H. Hess.....	375.00
40	F. Z. Hurd.....	300.00
41	John S. Bates.....	475.05
42	Gilbert Page .....	112.50
43	E. F. Akers.....	500.00
44	Robert A. Black.....	150.00
45	F. H. Foster.....	125.03
46	Louise Woodward .....	1,000.00
47	Thos. A. Malone.....	20.00
48	Gasper Geo. Receconi.....	102.00
49	G. H. Ferbert.....	4,000.00
50	Vance Lumber Co.....	6,000.00
51	Frank B. Totusek.....	100.00
		[95]
52	Fred P. Freeman.....	100.00
53	Fred P. Freeman.....	100.00
54	Fred P. Freeman.....	100.00
55	J. A. Woodin.....	75.00
56	H. K. Mardong.....	750.00
57	C. D. Smeltzer.....	51.00
58	H. D. Keenan.....	100.00
59	J. E. Stiegler.....	3,209.42
60	J. A. Vance.....	8,000.00
		<hr/>
		\$30,000.00
		<hr/>



That the further indebtedness of said Mutual Gold Corporation, owing at said time, plaintiffs are unable to more definitely state at this time.

Fourth:

In response to the sixth demand, plaintiffs allege that on August 25, 1938 Frank A. Garbutt, without valid cause or justification, gave to Mutual Gold Corporation written notice of forfeiture of the purchase contract, a copy of said notice being hereto attached, marked Exhibit "C", and made a part hereof. Said forfeiture was wrongful, fraudulent and unlawful in that same was without present or contemplated consideration and part of a scheme whereby illegally to deprive Mutual Gold Corporation of its assets as alleged in the complaint and in this bill of particulars.

Fifth:

In response to the seventh demand, plaintiffs allege that the arrangement for compensation, referred to in lines 22 and 23 of page 6 of the complaint, was paid pursuant to an arrangement with Russell F. Collins, G. H. Ferbert and W. L. Grill.

[96]

Sixth:

In response to the eighth demand, plaintiffs allege that the defendant Frank A. Garbutt:

(a) Procured the services of Russell F. Collins, G. H. Ferbert and W. L. Grill to actively assist in doing all and several the acts complained of in the

complaint, and specified in this bill of particulars.

(b) Arranged for, and did pay to Russell F. Collins and W. L. Grill their expenses, and for services, in the several amounts as shown herein.

(c) Gave the notice of forfeiture of August 25th, 1938, a copy of which is attached hereto.

(d) Induced the said Russell F. Collins and G. H. Ferbert to state and represent at a meeting of the stockholders and a meeting of the directors of Mutual Gold Corporation, held August 6th, 1938 or therabouts, that he would make a better deal than Vance, and in the interests of Mutual Gold Corporation. By their aid he obtained the several conveyances herein complained of, and made the several contracts specified in the complaint.

(e) Organized, and caused the organization of Log Cabin Mines Company to relieve himself of personal responsibility in the premises, said Log Cabin Mines Company being without assets except such as he owned and controlled.

(f) On or about September 11th, 1938, took wrongful possession of said mine and of all of the assets of Mutual Gold Corporation, and ever since has been in possession and control of same, and at all times since September 2, 1938, held himself out to Mutual Gold Corporation and its stockholders as its representative, operating the property for it.

[97]

All of the particular acts by the said Frank A. Garbutt were done under such circumstances that the true status of the property was unknown to

plaintiffs or other objecting stockholders of Mutual Gold Corporation, and was not disclosed or divulged by defendants, and said status and the accounts of said transactions were not entered upon, and did not appear upon the books of account, or records of Mutual Gold Corporation; that the books of account of Log Cabin Mines Company have never been made accessible to plaintiffs or said dissenting stockholders. That at all times there was a non-disclosure by defendants of the true facts of said transactions, and a holding out to Mutual Gold Corporation and its stockholders that said mine was the property of Mutual Gold Corporation and operated by Garbutt for it.

W. H. ABEL,  
O. C. MOORE,  
FREDERICK D. ANDERSON,  
Attorneys for Plaintiffs. [98]

State of Idaho  
County of Kootenai—ss.

M. I. HIGGENS, being first duly sworn, on oath deposes and says: that he is one of the plaintiffs herein, and that he makes this verification on his own behalf and on behalf of his co-plaintiffs; that he is familiar with the contents of the foregoing bill of particulars and that the matters and things therein contained are true in substance and in fact.

M. I. HIGGENS.

Subscribed and Sworn To before me this 19 day of March, 1940.

(Seal) J. WARD ARNEY,  
Notary Public in and for the State of Idaho, residing at Coeur d'Alene.

My commission expires 11-1-43. [99]

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EXHIBIT "A"

Memorandum of Agreement between Mutual Gold Corporation, organized under the laws of the State of Washington, hereinafter called the Seller, and Cecil B. deMille, hereinafter called the Buyer, Witnesseth:

The Seller, through its duly authorized representatives, states to the Buyer that it holds and is the owner in good standing of the contract hereinafter described for the lease and purchase of the Log Cabin Mine and that it has complied with all of the agreements to be performed to date thereunder; That it requires further equipment to make said property properly profitable:

1. Bringing in electric power from Leevining or Tioga Lodge, 2½ miles.....\$11,000.00
2. Electric hoist complete with motor and starter, etc. .... 7,000.00
3. Cage or skip and mine cars..... 1,500.00
4. Ball mill, 100 tons capacity, including motor, etc. .... 7,000.00

5. Classifier complete .....	3,000.00
6. Cyanide equipment, including tanks, motor and equipment capable of handling 100 tons daily .....	25,000.00
7. 6-inch pipe line, 5000 feet and installation thereof, to carry tailings to impounding dam .....	3,000.00
8. 500 cubic foot compressor, with motor, etc.	4,000.00
9. Additional building to house new machin- ery, including coverage for cyanide tanks.....	3,000.00
10. New bunkhouse and addition to cookhouse..	1,500.00
11. Assay office and equipment.....	1,000.00
12. Enlargement of present ore bins at shaft and mill .....	1,000.00
13. Payroll, truck hauling, cement, sand, etc. for 60 days during installation of above.....	10,000.00
14. Payment due on property Nov. 1, 1938.....	10,000.00
Total.....	\$88,000.00

The Seller operated said property for about 8 months and [100] treated the ore by amalgamation only, in the present 35 ton mill owned by it on the property with a daily recovery of \$297.50 and a daily expense of \$205.00.

The Seller milled some 6300 tons of ore, being all of the ore obtained from its development work on said property and realized \$53,350.00 therefrom at a profit of about \$14,000; detailed costs having been furnished to the Buyer.

The Seller and Buyer agree to cooperate in investigating and determining whether more suitable milling equipment than that above described and



recommended by the Seller can be obtained and if, in the opinion of the Buyer, such proves to be the case he may, at his option, alter the specification of the milling equipment accordingly provided said alteration meets with the approval of M. J. Keily.

The Seller agrees to sell its contract dated July 13, 1932 with the Chandis Securities Company, M. N. Ryan and Alice Clark Ryan for the purchase of the Log Cabin Mine and the group of mining claims contiguous thereto, subject to all modifications of said contract, which contract and its modifications are hereby made a part hereof; Included in this sale are all personal and real property belonging to the Seller now on or adjacent or tributary to, or used in connection with said Log Cabin Mine and its group.

And as to the fulfillment of this agreement upon the part of The Buyer will require some time, the Seller agrees to forthwith transfer its title to said property, real and personal, to Frank A. Garbutt, as trustee, to insure the carrying out of this agreement but without liability upon the trustee except the liability to transfer the said property to the Buyer, or his nominee, if and when said Buyer has well and fully performed his agreements con- [101] tained herein and/or re-convey said title to the Seller in event said Buyer does not faithfully carry out his agreements herein contained.

The Trustee shall not be liable for any acts or omissions of either party hereto nor for any defects in the title to said property either existing or



future, no matter how caused, and shall not be required to perform any act for the protection of said title unless or until instructed in writing by the beneficiaries hereunder and furnished with funds to do so. It is also agreed and understood that said trustee may acquire, if he so desires, any interest with either the Seller or Buyer without affecting his status as trustee.

In consideration of this agreement and the transfer above set forth, the Buyer agrees to do the following things:

1. Furnish \$10,000 to make the payment due the owners of the Log Cabin Mine November 1st, 1938.

2. Organize a corporation of such Capital Stock as he may desire and forthwith transfer one-half of its total authorized Capital Stock less one controlling share, to the Seller.

3. Furnish additional funds to a minimum of \$100,000. including the above mentioned \$10,000 to said corporation to be formed, as needed by it to equip said Log Cabin Mine with a mill of an estimated capacity of one hundred (100) tons daily or more, a suitable hoist and to bring in electrical power and for such other equipment and supplies as appear advisable.

4. Cause said trustee to transfer to said Corporation all titles received hereunder forthwith after said Corporation is qualified to hold same.

5. Take care of all further payments falling due to the owners of said Log Cabin Group amounting to \$120,000.00 in all. [102]

6. Proceed with the work of properly equipping said property as rapidly as weather conditions will permit.

7. Employ M. J. Keily, if he is available and as long as Frank A. Garbutt deems it advisable, to direct and superintend said mining operations.

8. At the Buyer's option to advance additional funds should such advances, in the opinion of the Buyer, become necessary or advisable.

9. Furnish the Seller with proper and detailed monthly statements of the operations of the Corporation to be formed.

10. The Buyer agrees to cooperate with the Seller in any reasonable way in protecting its and its stockholders' interests in order that the smallest shall receive benefits proportionate to the largest.

The Buyer shall be entitled to be repaid for all advances made by him out of any profits or funds available from the operation of said property or sale or other disposition of the property, but not otherwise.

When the Buyer has performed all acts hereinabove set forth which are obligatory hereunder he shall be deemed to have fulfilled this contract and his liability shall cease.

The Buyer may also terminate his liability hereunder at any time after furnishing the first \$10,000 specified herein by surrendering this contract and re-transferring said property to the Seller, in which event the Buyer shall be entitled to a repayment of the money advanced by him but only out of net

profits, or out of funds derived from the sale of said property shall the Seller herein sell to third parties. This right to repayment shall exist only for such advances as are made in accordance with this contract and the Buyer herein shall not be entitled to re- [103] payment for any further or additional advances, unless he has secured the written approval thereto of the Seller.

The Buyer, or his representatives, will consult at all reasonable times with the Seller before making any unusual or extraordinary outlays not contemplated herein and further agrees, insofar as his control of the enterprise is concerned, to use his best judgment in carrying on the operations contemplated. [104]

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EXHIBIT "B"

PRODUCTION CERTIFICATE

No. .... \$.....

For Value Received, the undersigned, a Washington Corporation, agrees to pay to..... the sum of ..... Dollars, without interest, out of net production receipts accruing from the sale of ores from its mining property, before any dividends shall be declared or paid by it upon its capital stock, and in no other manner whatsoever, except that in case of a voluntary or involuntary sale of its mining property, any balance unpaid hereon shall be paid out of the proceeds thereof

before any distribution shall be made to its stockholders.

“Net Production Receipts” hereinbefore referred to shall be construed to mean such receipts as shall remain after deducting therefrom all of the costs of producing, handling and milling said ore, necessary corporation expenses and taxes, a reasonable sum for mine development, such sum as the Board of Directors shall determine may be necessary for the purchase and/or payment of necessary mining equipment, and payments on account of the purchase price of said mining property by royalty or otherwise.

All sums which the undersigned shall have for the retirement of this and similar certificates shall be applied pro-rata upon the same.

The execution of this certificate has been authorized by resolution of the Board of Directors.

Dated this ..... day of January, 1938.

MUTUAL GOLD CORPORATION

By .....

Vice President.

Attest:

.....  
Secretary. [105]

EXHIBIT "C"

Mutual Gold Corporation August 25, 1938  
401 Fernwell Building  
Spokane, Wash.

Gentlemen:

This will inform you that we have elected to cancel and we hereby cancel your option and contract to purchase the Log Cabin Mine, which option and which contract is dated July 13, 1932. This action is final and absolute.

We recognize that this cancellation, while legal, may work a great hardship upon your stockholders but should you wish to negotiate for rehabilitation of this contract you may negotiate with the undersigned who will give the matter consideration provided your defaults are cured and other points of difference are adjusted to his satisfaction.

(Signed) FRANK A. GARBUTT.

Frank A. Garbutt—duly authorized representative of the owners, Chandis Securities Company and Alice Clark Ryan.

cc to

Mutual Gold Corporation  
Box 377, Leevining, Cal.

cc to

Mutual Gold Corporation  
Attention: Mr. J. A. Vance, General Manager,  
Vance Hotel,  
Seattle, Washington

[Endorsed] Bill of Particulars. Filed Mar. 28, 1940. [106]

[Title of District Court and Cause.]

ANSWER OF FRANK A. GARBUTT, ALICE  
CLARK RYAN, AND LOG CABIN MINES  
COMPANY.

Defendants Frank A. Garbutt, Alice Clark Ryan, and Log Cabin Mines Company, a corporation, for answer to plaintiffs' complaint herein, admit, deny, and alleges as follows:

I.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

II.

Answering paragraph IV of the complaint, defendants deny that plaintiff Charles W. Sutherland was at the time this suit was brought, or is now, a stockholder of defendant Mutual Gold Corporation, but admit that a majority of the stockholders and directors of said Mutual Gold Corporation were opposed to the bringing of this action. Further answering, defendants allege that they have no knowledge or information sufficient to form a belief as to the truth of plaintiffs' other allegations contained in said paragraph.

III.

Answering paragraph V of the complaint, defendants deny that Frank A. Garbutt has represented the owners in any respect since October 3, 1938.



IV.

Answering paragraph VI of plaintiffs' complaint, defendants admit that a stamp mill was erected on one of said claims; they deny that ore bodies in excess of 63,500 tons were developed in or on said claims; they deny that such ore bodies as were developed contained recoverable gold values in excess of \$650,000.00; and they allege that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of said paragraph.

Further answering, defendants allege that said stamp mill was erected by one J. A. Vance while he was acting as manager of defendant Mutual Gold Corporation's properties; that said J. A. Vance is the real party plaintiff in interest herein who induced and procured the nominal plaintiffs to bring this action; that said mill was unfit for milling ore at said property; that the money expended therefor was wasted and lost to defendant Mutual Gold Corporation through the negligence, incompetence, and betrayal of trust of said J. A. Vance; and that said developed ore contained no gold whatever that could have been recovered at a profit by the mill erected by, and the methods used by, said J. A. Vance as such manager.

V.

Answering paragraph VII of said complaint, defendants, deny that all the assets mentioned therein had a value on September 2, 1938 or at any other time in excess of \$60,000.00; deny that the stamp

mill, milling and mining machinery, supplies, and equipment mentioned therein were of the reasonable value of more than \$3,000.00; and deny that the additional mining claims mentioned therein were of the reasonable value of more than \$5,000.00.

#### VI.

Answering paragraph VIII of said complaint, defendants [108] allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

#### VII.

Answering paragraph IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX of said complaint, defendants deny that Frank A. Garbutt at any time conspired at all with or prevailed upon or caused the board of directors and/or executive officers of defendant Mutual Gold Corporation or any other person or corporation to transfer or agree to transfer the Mutual Gold Corporation's assets, or any assets, to a new corporation or at all, or to do anything whatsoever. Further answering, defendants allege that all the acts of Frank A. Garbutt complained of were taken and performed by him in good faith at the request of the Mutual Gold Corporation and without any secret or hidden purpose or intent in the belief that they were legal and fair and equitable to all parties concerned; and defendants allege that any and all transfers and acts of defendant Mutual Gold Corporation were made

and performed by it through its said executive officers and directors of their own *violation* without any duress, menace, fraud, or undue or improper influence whatsoever on the part of Frank A. Garbutt or any other person, and were made and performed by it without any intent to circumvent or violate any laws of the State of Washington or any laws, or to injure said Mutual Gold Corporation or its stockholders or creditors; and defendants further allege that all such transfers and acts were made and performed by said Mutual Gold Corporation, through its said executive officers and directors, with the authorization and approval of its stockholders, for an adequate and fair consideration, in a manner which defendants believe to have been in accord with the laws and public policy applicable thereto, because defendant Mutual Gold Corporation had no funds with [109] which to carry on its business and because said executive officers and directors therefore believed such transfers and acts to be for the best interest of said corporation and its stockholders and creditors, and to be necessary to prevent the total loss of said assets.

Further answering, defendants deny that said new corporation was to have no capital or assets other than the assets of the Mutual Gold Corporation, and allege that it was to have and did have \$10,000.00 cash paid into it for its capital stock.

Further answering, defendants allege that provision was made by defendants Mutual Gold Corpora-

tion, Frank A. Garbutt, and Log Cabin Mines Company for payment of the creditors of Mutual Gold Corporation.

Further answering, defendants deny that Frank A. Garbutt wrongfully gave any notice of forfeiture or arranged to advance or did advance the personal expenses of two or any number of said directors, or agreed to employ or did employ any of said directors to work for him in the negotiation for or the execution of any contracts or conveyances whatever; but defendants admit that Frank A. Garbutt loaned money from time to time to defendant Mutual Gold Corporation at its special instance and request which said corporation used for the payment of such expenses as it deemed fit and proper.

Further answering, defendants deny that any of defendant Log Cabin Mines Company's stock has been pledged to Frank A. Garbutt as alleged in paragraph XVII of the complaint, or to any one else.

#### VIII.

Defendants deny each and every allegation contained in paragraph XX and paragraph XXI of said complaint. [110]

#### IX.

Answering the allegation in paragraph XXII of said complaint that an installment of ten thousand dollars (\$10,000.) due November 1, 1939 on the purchase contract has not been paid, defendants allege that \$5,000.00 of said installment has been

paid and that as to the other \$5,000.00 such extension of time for payment has been obtained as may be necessary for the obligors to as late as, but not beyond, November 1, 1940. Defendants deny each and every other allegation contained in said paragraph.

X.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXIII, XXV, and XXVII of said complaint.

For a Further, Separate, and Second Defense, Defendants Allege:

That plaintiff Helen Maude Lorenz is estopped to bring this action for the reason that, as defendants are informed and believe and on that ground allege, she gave her proxy to J. E. Stiegler, president of defendant Mutual Gold Corporation, to be voted by him at the meeting of the stockholders of said corporation held on August 6, 1938; and that he voted said proxy, pursuant to authority that said plaintiff had given him, in favor of a resolution adopted at said meeting authorizing the directors of said corporation to do anything they deemed advisable in dealing with or disposing of said corporation's property.

For a Further, Separate, and Third Defense, Defendants Allege:

That the title to said contract of July 13, 1932 and to the supplements and modifications thereof has



been ad- [111] judged in Case No. 440-367 in the Superior Court of the State of California in and for the County of Los Angeles, entitled "Log Cabin Mines Company, a corporation, plaintiff, vs. Mutual Gold Corporation, a corporation, defendant," to be vested in defendant Log Cabin Mines Company; and that said judgment has become final and the matter is now *res judicata*. A copy of said judgment is attached hereto, marked "Exhibit A", and is hereby made a part of this answer.

For a Further, Separate, and Fourth Defense, Defendants Allege:

That on August 6, 1938, at a meeting of the stockholders of defendant Mutual Gold Corporation regularly called and held, a resolution was adopted by the affirmative vote of more than two-thirds of all said stockholders authorizing the doing of all the acts of said defendant corporation that plaintiffs complain of. A copy of said resolution is attached hereto as "Exhibit B", and is hereby made a part of this answer.

For a Further, Separate, and Fifth Defense, Defendants Allege:

#### I.

That plaintiffs are not the real parties in interest in this action; that the real party in interest is one J. A. Vance of the State of Washington; that this suit was brought at his instigation; that he solicited each of the nominal plaintiffs to join in this suit and



agreed to pay all their expenses incurred herein, including attorneys' fees; that this suit is one of four that he has caused to be brought to further his plan to obtain control of said defendant Mutual Gold Corporation and its property; and that this suit was not brought in good faith to and for the benefit of the minority stockholders of said Mutual Gold Corporation other than the said J. A. Vance. [112]

II.

That said J. A. Vance is estopped to bring this action for the reason that he voted in favor of the resolution of which Exhibit B attached hereto is a copy.

Wherefore, defendants pray that plaintiffs take nothing by their action, and that defendants have judgment for their costs herein.

DAVID E. HINCKLE,

Attorney for Defendants.

[113]

## EXHIBIT A

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 440-367

LOG CABIN MINES COMPANY, a corporation,  
Plaintiff,

vs.

MUTUAL GOLD CORPORATION, a corporation,  
et al,

Defendants.

JUDGMENT QUIETING TITLE AFTER  
DEFAULT TO PERSONAL PROPERTY.

In this action, it appearing to the satisfaction of this Court, sitting in Department 34 thereof, that

(a) The defendant Mutual Gold Corporation, a corporation, was duly and personally served with the Summons and Complaint herein, and

(b) It further appearing that no appearance has been made and no answer filed by the said defendant; and a default of said defendant having been duly entered; and evidence having been introduced and heard in open court, and the court being satisfied that the allegations of the complaint are true, and that the relief asked for should be granted,

Now, upon motion of David E. Hinckle, Attorney for the plaintiff Log Cabin Mines Company,

It is hereby Ordered, Adjudged, and Decreed:

1. That at the time of the commencement of this action there was vested in plaintiff, as the owner

absolute, title to that certain contract dated July 13, 1932 for the sale of certain mining claims in Mono County, California, executed by M. N. Clark, Alice Clark Ryan, and the Chandis Securities Company as vendors, and by Russell F. Collins and Ben L. Collins as vendees, as said contract was supplemented by written instrument dated April 28, 1934 and was modified and amended by written instrument executed on or about October 9, 1936, a [114] copy of said contract being attached, as "Exhibit A", to the complaint filed herein, and a copy of said instrument supplementing said contract being attached, as "Exhibit B", to said complaint, and a copy of said instrument modifying and amending said contract being attached, as "Exhibit C", to said complaint.

Said mining claims agreed by said contract to be conveyed are: Log Cabin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Mill Site, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tammarack, Oro, and Burke Fraction.

II. Plaintiff's title to the above described personal property is hereby forever quieted against any and all claims, demands, and/or pretensions of said defendant to any right, title, possession, lien, interest, and/or equity in the above described personal property, and it is hereby perpetually enjoined and restrained from setting up or making any

claim to or upon the personal property above described, or any part thereof.

Dated: June 13th, 1939.

WILSON,

Judge of the Superior Court.

[115]

### EXHIBIT B

#### RESOLUTION ADOPTED BY THE STOCK- HOLDERS OF MUTUAL GOLD CORPORA- TION ON AUGUST 6, 1938.

“Resolved, that the Board of Directors of this corporation be and they are hereby authorized, empowered and directed to sell, lease, deal with, operate, exchange or otherwise dispose of, to any person, persons, or corporation desiring to purchase, lease, deal with, exchange, operate same, any part of or all of the assets of this corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection, which in their judgment they may deem necessary or advisable.”

[116]

State of California

County of Los Angeles—ss.

Frank A. Garbutt being by me first duly sworn, deposes and says: that he is one of the defendants

answering herein to the complaint in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

FRANK A. GARBUTT.

Subscribed and sworn to before me this 11th day of April, 1940.

(Seal) ALTHEA K. HINCKLE,  
Notary Public within and for Los Angeles County,  
California.

My commission expires May 20, 1940.

[Endorsed]: Filed Apr. 11, 1940. [117]

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[Title of District Court and Cause.]

ANSWER OF  
MUTUAL GOLD CORPORATION.

Defendant Mutual Gold Corporation, a corporation, for answer to plaintiffs' complaint herein, admits, denies, and alleges as follows:

I.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

## II.

Answering paragraph IV of the complaint, defendant denies that plaintiff Charles W. Sutherland was at the time this suit was brought, or is now, a stockholder of defendant Mutual Gold Corporation, but admits that a majority of the stockholders and directors of said corporation were opposed to the bringing of this action. Further answering, defendant alleges that it has no knowledge or information sufficient to form a belief as to the truth of plaintiffs' other allegations contained in said paragraph.

## III.

Answering paragraph V of the complaint, defendant denies that Frank A. Garbutt has represented the owners in any respect or matter since October 3, 1938. [118]

## IV.

Answering paragraph VI of plaintiffs' complaint, defendant admits that a stamp mill was erected on one of said claims; but it denies that ore bodies in excess of 63,500 tons were developed in or on said claims; denies that such ore bodies as were developed contained recoverable gold values in excess of \$650,000.00; and denies each and every other allegation contained in said paragraph.

Further answering, defendants allege that said stamp mill was erected by one J. A. Vance while he was acting as manager of defendant Mutual Gold



Corporation's properties; that said J. A. Vance is the real party plaintiff in interest herein who induced and procured the nominal plaintiffs to bring this action; that said mill was unfit for milling ore at said claims; that the money expended therefor was wasted and lost to defendant Mutual Gold Corporation through the negligence, incompetence, and betrayal of trust of said J. A. Vance; and that said developed ore contained no gold whatever that could have been recovered at a profit by the mill erected by, and the methods used by, said J. A. Vance as such manager.

V.

Answering paragraph VII of said complaint, defendant denies that all the assets mentioned therein had a value on September 2, 1938 or at any other time in excess of \$60,000.00; denies that the stamp mill, milling and mining machinery, supplies, and equipment mentioned therein were of the reasonable value of more than \$5,000.00; and denies that the additional mining claims mentioned therein were of the reasonable value of more than \$5,000.00.

VI.

Answering paragraphs IX, X, XI, XII, XIII, XIV, XV, XVI XVII, XVIII, and XIX of said complaint, defendant [119] denies that Frank A. Garbutt at any time conspired at all with or prevailed upon or caused the board of directors and/or executive officers of defendant Mutual Gold Cor-

poration or any other person or corporation to transfer or agree to transfer the Mutual Gold Corporation's assets, or any assets, to a new corporation or at all, or to do anything whatsoever. Further answering, defendant alleges that all the acts of Frank A. Garbutt complained of were taken and performed by him in good faith at the request of the Mutual Gold Corporation and without any secret or hidden purpose or intent in the belief that they were legal and fair and equitable to all parties concerned; and defendant alleges that any and all transfers and acts of defendant Mutual Gold Corporation were made and performed by it through its said executive officers and directors of their own volition without any duress, menace, fraud, or undue or improper influence whatsoever on the part of Frank A. Garbutt or any other person, and were made and performed by it without any intent to circumvent or violate any laws of the State of Washington or any laws, or to injure said Mutual Gold Corporation or its stockholders or creditors; and defendant further alleges that all such transfers and acts were made and performed by it, through its said executive officers and directors, with the authorization and approval of its stockholders, for an adequate and fair consideration, in a manner which defendant believes to have been in accord with the laws and public policy applicable thereto, because defendant had no funds with which to carry on its business and because said executive officers

and directors therefore believed such transfers and acts to be for the best interest of said corporation and its stockholders and creditors, and to be necessary to prevent the total loss of said assets.

Further answering, defendant denies that said new corporation was to have no capital or assets other than the as- [120] sets of the Mutual Gold Corporation, and alleges that it was to have and did have \$10,000.00 cash paid in to it for its capital stock.

Further answering, defendant alleges that provision was made by defendants Mutual Gold Corporation, Frank A. Garbutt, and Log Cabin Mines Company for payment of the creditors of Mutual Gold Corporation.

Further answering, defendant denies that Frank A. Garbutt wrongfully gave any notice of forfeiture or arranged to advance or did advance the personal expenses of two or any number of said directors, or agreed to employ or did employ any of said directors to work for him in the negotiation for or the execution of any contract or conveyance whatever; but defendant admits that Frank A. Garbutt loaned money to it from time to time at its special instance and request, which is used for the payment of such expenses as it deemed fit and proper.

Further answering, defendant denies that any of defendant Log Cabin Mines Company's stock has been pledged to Frank A. Garbutt as alleged in paragraph XVII of the complaint, or to any one else or at all.

## VII.

Defendant denies each and every allegation contained in paragraphs XX, XXI, and XXII of said complaint.

## VIII.

Answering paragraph XXIII of said complaint, defendant admits that, as alleged, a special meeting of its stockholders was called and the call rescinded, but denies that said rescission was because of opposition of its stockholders to any corporate action performed or proposed to be performed, and denies each and every other allegation in said paragraph contained. [121]

## IX.

Answering paragraph XXIV of said complaint, defendant denies that plaintiffs or any other of defendant's stockholders have applied to the president of this defendant corporation to call a stockholders' meeting to consider specially the acts, agreements, and conveyances complained of, or to obtain relief therefrom; and denies that said president has ever refused to call such a stockholders' meeting.

## X.

Answering paragraph XXV of said complaint, defendant admits that the number of shares of this corporation's stock represented by plaintiffs is less than one-third of all the outstanding stock of this corporation, but denies each and every other allegation in said paragraph contained.

XI.

Answering paragraph XXVII of said complaint, defendant denies that it has no legal remedy to protect its rights, interest, and title in said property, and denies that its rights, interest, and title therein and thereto are in anywise in jeopardy.

For a Further, Separate, and Second Defense Defendant Alleges:

That plaintiff Helen Maude Lorenz is estopped to bring this action for the reason that, as defendant is informed and believes and on that ground alleges, she gave her proxy to J. E. Stiegler, president of this defendant corporation, to be voted by him at the meeting of the stockholders of this corporation held on August 6, 1938; and that he voted said proxy, pursuant to authority that said plaintiff had given him, in favor of a resolution adopted at said meeting authorizing the directors of this corporation to do anything they deemed ad- [122] visable in dealing with or disposing of this defendant's property.

For a Further, Separate, and Third Defense, Defendant Alleges:

That the title to said contract of July 13, 1932 and to the supplements and modifications thereof has been adjudged in Case No. 440-367 in the Superior Court of the State of California in and for the County of Los Angeles, entitled "Log Cabin Mines Company, a corporation, plaintiff, vs. Mutual Gold Corporation, a corporation, defendant," to



be vested in defendant Log Cabin Mines Company; and that said judgment has become final and the matter is now *res judicata*. A copy of said judgment is attached hereto, marked "Exhibit A," and is hereby made a part of this answer.

For a Further, Separate, and Fourth Defense, Defendant Alleges:

That on August 6, 1938, at a meeting of the stockholders of this defendant corporation regularly called and held, a resolution was adopted by the affirmative vote of more than two-thirds of all said stockholders authorizing the doing of all the acts of this defendant that plaintiffs complain of. A copy of said resolution is attached hereto as "Exhibit B", and is hereby made a part of this answer.

For a Further, Separate, and Fifth Defense, Defendant Alleges:

That plaintiffs are not the real parties in interest in this action; that the real party in interest is one J. A. Vance of the State of Washington; that this suit was brought at his instigation; that he solicited each of the [123] plaintiffs to join in this suit and agreed to pay all their expenses incurred herein, including attorneys' fees; that this suit is one of four that he has caused to be brought to further his plain to obtain control of this defendant corporation and its property; and that this suit was not brought in good faith to and for the



benefit of the minority stockholders of this corporation.

That said J. A. Vance is estopped to bring this action for the reason that he voted in favor of the resolution of which Exhibit B attached hereto is a copy.

Wherefore, defendant prays that plaintiffs take nothing by their action, and that defendant have judgment for its costs.

DAVID E. HINCKLE,

Attorney for Defendant. [124]

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EXHIBIT A

In the Superior Court of the State of California

In and for the County of Los Angeles

No. 440-367

LOG CABIN MINES COMPANY, a corporation,  
Plaintiff,

vs.

MUTUAL GOLD CORPORATION, a corporation,  
et al.,

Defendants.

JUDGMENT QUIETING TITLE AFTER DE-  
FAULT TO PERSONAL PROPERTY.

In this action, it appearing to the satisfaction of this Court, sitting in Department 34 thereof, that

(a) The defendant Mutual Gold Corporation, a corporation, was duly and personally served with the Summons and Complaint herein, and

(b) It further appearing that no appearance has been made and no answer filed by the said defendant; and a default of said defendant having been duly entered; and evidence having been introduced and heard in open court, and the court being satisfied that the allegations of the complaint are true, and that the relief asked for should be granted,

Now, upon motion of David E. Hinckle, Attorney for the plaintiff Log Cabin Mines Company,

It is hereby Ordered, Adjudged, and Decreed;

I. That at the time of the commencement of this action there was vested in plaintiff, as the owner absolute, title to that certain contract dated July 13, 1932 for the sale of certain mining claims in Mono County, California, executed by M. N. Clark, Alice Clark Ryan, and the Chandis Securities Company as vendors, and by Russell F. Collins and Ben L. Collins as vendees, as said contract was supplemented by written instrument dated April 28, 1934 and was modified and amended by written instrument executed on or about October 9, 1936, a copy [125] of said contract being attached, as "Exhibit A," to the complaint filed herein, and a copy of said instrument supplementing said contract being attached, as "Exhibit B", to said complaint, and a copy of said Instrument modifying and amending said contract being attached, as "Exhibit C", to said complaint.

Said mining claims agreed by said contract to be conveyed are: Log Cabin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Mill Site, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tamarack, Oro, and Burke Fraction.

II. Plaintiff's title to the above described personal property is hereby forever quieted against any and all claims, demands, and/or pretensions of said defendant to any right, title, possession, lien, interest and/or equity in the above described personal property, and it is hereby perpetually enjoined and restrained from setting up or making any claim to or upon the personal property above described, or any part thereof.

Dated: June 13th, 1939.

WILSON

Judge of the Superior Court.

[126]

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EXHIBIT B

Resolution Adopted by the Stockholders of Mutual Gold Corporation on August 6, 1938.

“Resolved, that the Board of Directors of this corporation be and they are hereby authorized, empowered and directed to sell, lease, deal with, operate, exchange or otherwise dispose of, to any person, persons, or corporation desiring to purchase, lease,

deal with, exchange, or operate same, any part of or all of the assets of this corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection, which in their judgment they may deem necessary or advisable." [127]

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State of Washington

County of Spokane—ss.

E. Fuson, being by me first duly sworn, deposes and says: that she is the assistant secretary of Mutual Gold Corporation, a Washington corporation, and one of the defendants in the above entitled action; that she has read the foregoing answer and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

**E. FUSON**

Subscribed and sworn to before me this 8th day of April, 1940.

[Seal]

E. D. WELLER

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Apr. 11, 1940. [128]

[Title of District Court and Cause.]

ANSWER OF CHANDIS SECURITIES  
COMPANY

Comes now the defendant, Chandis Securities Company, and answering plaintiffs' complaint and Bill of Particulars for itself, alone, admits, denies and alleges as follows:

I.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of plaintiffs' complaint.

II.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of plaintiffs' complaint.

III.

Denies that Frank A. Garbutt represented this defendant since the negotiation of the purchase contract referred to in paragraph V of plaintiffs' complaint in respect to all matters of performance thereof, or in any such matters whatsoever, and alleges that said Frank A. Garbutt is not now, and at no time has been, the agent or representative of this defendant in respect to matters of performance of said purchase contract.

## IV.

Alleges that this defendant is without knowledge or informa- [129] tion sufficient to form a belief as to the truth of the allegations in paragraph VI of plaintiffs' complaint.

## V.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of plaintiffs' complaint.

## VI.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII of plaintiff's complaint.

## VII.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IX of plaintiff's complaint.

## VIII.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph X of plaintiffs' complaint.

## IX.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the



truth of the allegations contained in paragraph XI of plaintiffs' complaint.

X.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XII of plaintiffs' complaint.

XI.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of plaintiffs' complaint.

XII.

Alleges that this defendant is without knowledge or in- [130] formation sufficient to form a belief as to the truth of the allegations contained in paragraph XIV of plaintiffs' complaint.

XIII.

Alleges that this defendant, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XV of plaintiff's complaint.

XIV.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XVI of plaintiffs' complaint.

## XV.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XVII of plaintiffs' complaint.

## XVI.

Answering paragraph XVIII of plaintiffs' complaint, denies that the deed, a copy of which is attached to plaintiffs' complaint, marked Exhibit "14" was executed with the knowledge and approval of this defendant, and alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations in said paragraph XVIII contained.

## XVII.

Answering paragraph XIX of plaintiffs' complaint, alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph XIX of plaintiffs' complaint.

## XVIII.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XX of plaintiffs' complaint. [131]

## XIX.

Answering paragraph XXI of plaintiff's complaint, denies that each of the contracts, deeds, bills of sale and assignments referred to in said

paragraph XXI were executed and the acts of Mutual Gold Corporation, Frank A. Garbutt and Log Cabin Mines Company referred to in said paragraph XXI were done with the knowledge and approval of this defendant; denies that said contracts, deeds, bills of sale and assignments were executed and said acts of Mutual Gold Corporation, Frank A. Garbutt and Log Cabin Mines Company were done as a part of the unlawful conspiracy alleged by plaintiff to transfer all of the assets of Mutual Gold Corporation to Log Cabin Mines Company without consideration, for a minority stock interest in Log Cabin Mines Company, and alleges that all of said contracts, deeds, bills of sale and assignments were executed and the said acts of Mutual Gold Corporation, Frank A. Garbutt and Log Cabin Mines Company were done without the knowledge or approval of this defendant. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations in said paragraph XXI contained.

## XX.

Answering paragraph XXII of plaintiffs' complaint, admits that the installment of Ten Thousand Dollars (\$10,000.00) due on the purchase contract November 1, 1939 had not been paid at the time of filing plaintiffs' complaint. Alleges that subsequent to the time of filing plaintiffs' complaint, and on or about March 29, 1940, the sum of Five Thousand Dollars (\$5,000.00) on account of said in-

stallment of Ten Thousand Dollars (\$10,000.00) was paid to and received by this defendant. Denies that this defendant has refused to recognize Mutual Gold Corporation as the owner of the purchase contract referred to in said paragraph XXII of plaintiffs' complaint at all times [132] since September 2, 1938, or at any time, or at all. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations in said paragraph XXII contained.

#### XXI.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXIII of plaintiffs' complaint.

#### XXII.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXIV of plaintiffs' complaint.

#### XXIII.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXV of plaintiffs' complaint.

#### XXIV.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraph XXVI of plaintiffs' complaint.

XXV.

Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXVII of plaintiffs' complaint.

XXVI.

Answering paragraph First of plaintiffs' Bill of Particulars furnished the defendants pursuant to order of court dated February 17, 1940, supplementing plaintiffs' complaint, denies that the circumstances and particulars referred to in said paragraph First are within the knowledge of this defendant and alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations [133] in said paragraph First contained.

XXVII.

Answering paragraph Third of plaintiffs' Bill of Particulars furnished the defendants pursuant to order of court dated February 17, 1940, supplementing plaintiffs' complaint, alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph Third of plaintiffs' Bill of Particulars.

XVIII.

Answering paragraph Fourth of plaintiffs' Bill of Particulars furnished the defendants pursuant to

order of court dated February 17, 1940, supplementing plaintiffs' complaint, alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph Fourth of plaintiffs' Bill of Particulars.

### XXIX.

Answering allegations contained in paragraphs Fifth and Sixth of plaintiffs' bill of particulars, furnished the defendants pursuant to order of court dated February 17, 1940, supplementing plaintiffs' complaint, admits that the true status of the property referred to on page 12 of said Bill of Particulars was not disclosed or divulged by this defendant, and alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraphs Fifth and Sixth contained.

Wherefore, the defendant, Chandis Securities Company prays that plaintiffs take nothing by their action, and that this defendant have judgment for its costs herein.

RICHARD G. ADAMS

Attorney for Defendant,  
Chandis Securities Company.  
Times Building,  
202 West First Street,  
Los Angeles, California  
MAdison 2345 [134]



State of California  
County of Los Angeles—ss.

H. E. Downing, being first duly sworn, deposes and says: That he is an officer, to-wit, Assistant-Secretary of Chandis Securities Company, one of the defendants in the foregoing and above entitled action; that he has read the within Answer and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are herein stated on his information or belief, and as to those matters he believes it to be true.

H. E. DOWNING

Subscribed and sworn to before me this 18th day of April, 1940.

[Seal]

C. O. DENNING

Notary Public in and for said County and State.

[Endorsed]: Answer of Chandis Securities Company. Filed Apr. 18, 1940. [135]

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[Title of District Court and Cause.]

REPLY UNTO ANSWER OF MUTUAL  
GOLD CORPORATION

For reply unto the answer of Mutual Gold Corporation plaintiffs admit, deny and allege as follows:

I.

Answering unto paragraph four thereof, they deny that said stamp mill was erected by J. A.

Vance, and deny that he was manager, or acting as manager, of defendant Mutual Gold Corporation's properties at the time said stamp mill was erected; deny that said J. A. Vance is the real party in interest herein, and deny that the plaintiffs are nominal plaintiffs only; deny that J. A. Vance induced, or procured, plaintiffs to bring this action, but admits that J. A. Vance has, and will, contribute to [146] the prosecution thereof; deny that said mill was unfit for milling ore; deny that the money expended for said mill was wasted, or lost, to defendant Mutual Gold Corporation through the negligence, incompetency or betrayal of trust of the said J. A. Vance, and deny that said money was wasted, or lost, at all to Mutual Gold Corporation; deny that said developed ore contained no gold recoverable at a profit by the said mill, or by the methods used by J. A. Vance as manager.

## II.

For reply unto paragraph six, plaintiffs deny that any of the acts of Frank A. Garbutt, complained of, were in good faith, or taken, or performed, by him in good faith, and deny that any of said acts were had, or done in the belief that they were legal and fair and equitable. Deny that there was no duress, menace, fraud or undue, or improper, influence on the part of Frank A. Garbutt, and deny that there was no intent to circumvent, or violate, the laws of the State of Washington; deny that there was no intent to injure Mutual Gold

Corporation, its stockholders and creditors; deny that said transfers and acts were made and performed with the authorization and approval of the stockholders of defendant Mutual Gold Corporation; deny that there was adequate, or fair, consideration, or any consideration therefor; deny that the executive officers and directors of Mutual Gold Corporation believed said transfers and acts to be for the best interests of the corporation, and its stockholders and creditors, or to be necessary to prevent loss of assets; deny that provision was made by the defendants, or either of them, for payment of the creditors of Mutual Gold Corporation.

[147]

### III.

For reply unto the second defense in said answer of Mutual Gold Corporation, the plaintiffs admit, deny and allege:

(1) Deny that plaintiff Helen Maude Lorenz is estopped to bring this action; admit that she gave a proxy to J. E. Stiegler to be voted by him at the meeting of the stockholders held August 6, 1938, but deny the passage of the alleged resolution claimed to have been passed at said meeting, and deny the legality thereof. That the call for said meeting did not include among the purposes of said meeting, the organization by Mutual Gold Corporation of Log Cabin Mines Company, or any new corporation, or subscription to the stock thereof, or

transfer of all, or any, of the assets of Mutual Gold Corporation to any such corporation, nor include proposed authorization of the acts, transactions, or instruments, or any thereof, under attack in the complaint. The proxy given by Helen Maude Lorenz to J. E. Stiegler did not authorize him to vote in support of any such resolution or action, or any resolution of like import.

#### IV.

For reply unto the third defense in said answer, plaintiffs admit, deny and allege as follows:

(1) Admit that on the 13th day of July, 1939, in the Superior Court of the State of California in and for the County of Los Angeles, there was made and entered in Case No. 40-367, entitled: "Log Cabin Mines Company, a corporation, plaintiff, vs. Mutual Gold Corporation, a corporation, et al, defendants", a purported and pretended final judgment purporting to quiet title [148] to said purchase contract in Log Cabin Mines Company. Plaintiffs deny that said judgment has become final or res adjudicata as against these plaintiffs, or at all. Said judgment was rendered by default solely upon false allegations in the complaint therein that Log Cabin Mines Company was the owner by assignment of the said purchase contract, and that Mutual Gold Corporation wrongfully claimed and asserted an interest therein, whereas, Mutual Gold Corporation was the actual owner, but at the time was disclaiming ownership of the said purchase contract,

and Log Cabin Mines Company had no interest therein except to the extent that it was a trustee for Mutual Gold Corporation in respect thereto.

(2) At the time of the alleged transfer of the purchase contract, an interlocking directorate existed between said two companies, Mutual Gold Corporation and Log Cabin Mines Company, in that G. H. Ferbert and W. L. Grill were members of each thereof, and a majority of the directors of each company were, and have been at all times, dominated and controlled by Frank A. Garbutt, and the action, Case No. 440-367, was brought by Log Cabin Mines Company against Mutual Gold Corporation in collusion between defendants, as part of the plan complained of in the complaint.

(3) None of the plaintiff stockholders, nor any considerable number of stockholders of Mutual Gold Corporation (other than Frank A. Garbutt, W. L. Grill, G. H. Ferbert, J. E. Stiegler and Russell F. Collins) had any knowledge or information of the institution or pendency of said action, or the entry of judgment therein, until the answer in this case was served. The issues in said action were false, sham, feigned, and fictitious, and the [149] court in which judgment was rendered was without jurisdiction of the subject matter, or the cause of action, for that the situs of said purchase contract, and the vendee's interest in the property covered thereby, was in Mono County, California, and not elsewhere. The directors and executive officers of



Mutual Gold Corporation acted in excess of their powers in failing and refusing to defend said action and in permitting judgment to go by default, all with the fraudulent purpose to affirm by said judgment the lodgment of the purchase contract, and the vendee's interest therein, in Log Cabin Mines Company. Said purchase contract, and the vendee's interest therein, was a material, and the main asset of Mutual Gold Corporation, without which it could not carry on its corporate activities.

(4) When said action, Case No. 440-367, was instituted, a stockholders' action, to-wit: Case No. 103 233, was and ever since has been, pending in the Superior Court of the State of Washington for Spokane County, in which A. P. Bateham and E. T. Richter were plaintiffs, and Frank A. Garbutt, Mutual Gold Corporation and Log Cabin Mines Company were defendants, which action was a stockholders' suit, brought by the minority stockholders of, and on behalf of, Mutual Gold Corporation, to quiet its title to said purchase contract. The several defendants herein knew of the pendency thereof and of all the proceedings therein, and Log Cabin Mines Company, notwithstanding such knowledge, falsely alleged in the complaint in said action that Mutual Gold Corporation wrongfully claimed an interest in the purchase contract, when in fact Mutual Gold Corporation, by said dominated board of directors, wrongfully refused in said action to claim any interest, but disclaimed any interest, in the purchase contract. [150]



## V.

For reply unto the fourth defense in said answer, the plaintiffs admit, deny and allege:

(1) Deny each and every allegation therein contained, and deny the passage of any resolution at said stockholders' meeting of August 6, 1938. The stockholders of Mutual Gold Corporation did not, unanimously or otherwise, by any resolution, authorize Mutual Gold Corporation, its board of directors, or executive officers, to organize, or cause to be organized, Log Cabin Mines Company, or any new corporation, for which Mutual Gold Corporation would subscribe for all, or any part, of the capital stock thereof, or transfer all, or any, of the assets of Mutual Gold Corporation thereto. That no call for stockholders' meeting on said date, or at any other time, informed the stockholders of Mutual Gold Corporation of any purpose, or proposal to organize, or authorize the organization of Log Cabin Mines Company, or any new corporation, or subscribe for the capital stock, of any thereof, of Log Cabin Mines Company, or any new corporation, or transfer all, or any of the assets of Mutual Gold Corporation thereto, and no proxy by any stockholder authorized any holder thereof to vote to authorize the passage of any resolution for any of said purposes. That any such resolution would have been, and was, in violation of the laws of the State of Washington and the public policy of said state, for that no meeting was called, or held, for any of

said purposes, nor lawful approval of the stockholders obtained, as required by the laws of Washington and the public policy of said State. [151]

## VI.

For reply unto the fifth defense in said answer, the plaintiffs admit, deny and allege:

(1) Deny that they are not the real parties in interest herein; deny that the real party in interest is J. A. Vance; deny that said suit was brought at his instigation, but admit that he was one, among others, who solicited the plaintiffs to act as such, and that since the action was brought he has contributed to pay the court costs and attorneys' fees incurred therein; deny that any other stockholders' suit has been brought to their knowledge, except a suit brought in the Superior Court of the State of Washington for Spokane County, in which A. P. Bateham and E. T. Richter were plaintiffs and Frank A. Garbutt, Mutual Gold Corporation and Log Cabin Mines Company were defendants, in which suit jurisdiction has not been obtained over the subject matter of the cause of action, nor over the persons of any of the defendants, except Mutual Gold Corporation, and which is not upon the cause of action sued on herein. Deny that J. A. Vance has any plan to control Mutual Gold Corporation or its property; deny that this suit was not brought in good faith, or for the benefit of the minority stockholders of the corporation; deny

that the said J. A. Vance is estopped to bring this action.

Wherefore, Plaintiffs pray judgment upon their complaint herein.

W. H. ABEL

O. C. MOORE

FREDERICK D. ANDERSON

Frederick D. Anderson

650 Subway Terminal Bldg.

Los Angeles, California

Attorneys for Plaintiffs.

[Endorsed]: Filed Sep. 3, 1940. [152]

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[Title of District Court and Cause.]

REPLY UNTO ANSWER OF FRANK A. GAR-  
BUTT, ALICE CLARK RYAN, AND LOG  
CABIN MINES COMPANY

For reply unto the answer of Frank A. Garbutt, Alice Clark Ryan and Log Cabin Mines Company plaintiffs admit, deny and allege as follows:

I.

Answering unto Paragraph IV thereof, they deny that said stamp mill was erected by J. A. Vance, and deny that he was manager, or acting as manager, of defendant Mutual Gold Corporation's properties at the time said stamp mill was erected; deny that said J. A. Vance is the real party in interest

herein, and deny that the plaintiffs are nominal plaintiffs only; deny that J. A. Vance induced, or procured plaintiffs to bring this action, but admit that J. A. Vance has, and will, contribute to the prosecution thereof; deny that said mill was unfit for milling ore; deny that the money expended for said mill was wasted or lost to defendant Mutual Gold Corporation through the negligence, [153] incompetency or betrayal of trust of the said J. A. Vance, and deny that said money was wasted, or lost at all to Mutual Gold Corporation; deny that said developed ore contained no gold recoverable at a profit by the said mill, or by the methods used by J. A. Vance as manager.

## II.

For reply unto Paragraph VII, plaintiffs deny that any of the acts of Frank A. Garbutt complained of were in good faith, or taken or performed by him in good faith, and deny that any of said acts were had, or done, in the belief that they were legal, fair and equitable. Deny that there was no duress, menace, fraud or undue or improper influence on the part of Frank A. Garbutt, and deny that there was no intent to circumvent, or violate the laws of the State of Washington; deny that there was no intent to injure Mutual Gold Corporation, its stockholders and creditors; deny that said transfers and acts were made and performed with the authorization and approval of the

stockholders of defendant Mutual Gold Corporation; deny that there was adequate, or fair consideration, or any consideration, therefor; deny that the executive officers and directors of Mutual Gold Corporation believed said transfers and acts to be for the best interests of the corporation, its stockholders and creditors, or to be necessary to prevent loss of assets; deny that provision was made by the defendants, or either of them, for payment of the creditors of Mutual Gold Corporation.

### III.

For reply unto the second defense in said answer, the plaintiffs admit, deny and allege: [154]

(1) Deny that plaintiff Helen Maude Lorenz is estopped to bring this action; admit that she gave a proxy to J. E. Stiegler to be voted by him at the meeting of the stockholders held August 6, 1838, but deny the passage of the alleged resolution claimed to have been passed at said meeting, and deny the legality thereof. That the call for said meeting did not include among the purposes of said meeting, the organization by Mutual Gold Corporation of Log Cabin Mines Company, or any new corporation, or subscription to the stock thereof, or transfer of all, or any, of the assets of Mutual Gold Corporation to any such corporation, nor include proposed authorization of the acts, transactions, or instruments, or any thereof, under attack in the complaint. The proxy given by Helen Maude Lorenz to J. E. Stiegler did not authorize him to vote



in support of any such resolution or action, or any resolution of like import.

#### IV.

For reply unto the third defense in said answer, plaintiffs admit, deny and allege as follows:

(1) Admit that on the 13th day of July, 1939, in the Superior Court of the State of California in and for the County of Los Angeles, there was made and entered in Case No. 440-367, entitled: "Log Cabin Mines Company, a corporation, plaintiff, vs. Mutual Gold Corporation, a corporation, et al, defendants", a purported and pretended final judgment purporting to quiet title to said purchase contract in Log Cabin Mines Company. Plaintiffs deny that said judgment has become final or res adjudicata as against these plaintiffs, or at all. Said judgment was rendered by default solely upon false allegations in the complaint therein [155] that Log Cabin Mines Company was the owner by assignment of the said purchase contract, and that Mutual Gold Corporation wrongfully claimed and asserted an interest therein, whereas, Mutual Gold Corporation was the actual owner, but at the time was disclaiming ownership of the said purchase contract, and Log Cabin Mines Company had no interest therein except to the extent that it was a trustee for Mutual Gold Corporation in respect thereto.

(2) At the time of the alleged transfer of the purchase contract, an interlocking directorate ex-



isted between said two companies, Mutual Gold Corporation and Log Cabin Mines Company, in that G. H. Ferbert and W. L. Grill were members of each thereof, and a majority of the directors of each company were, and have been at all times, dominated and controlled by Frank A. Garbutt, and the action, Case No. 440-367, was brought by Log Cabin Mines Company against Mutual Gold Corporation in collusion between defendants, as part of the plan complained of in the complaint.

(3) None of the plaintiff stockholders, nor any considerable number of stockholders of Mutual Gold Corporation (other than Frank A. Garbutt, W. L. Grill, G. H. Ferbert, J. E. Stiegler and Russell F. Collins) had any knowledge or information of the institution or pendency of said action, or the entry of judgment therein, until the answer in this case was served. The issues in said action were false, sham, feigned, and fictitious, and the court in which judgment was rendered was without jurisdiction of the subject matter, or the cause of action, for that the situs of said purchase contract, and the vendee's interest in the property covered thereby, was in Mono County, California, and not elsewhere. [156] The directors and executive officers of Mutual Gold Corporation acted in excess of their powers in failing and refusing to defend said action and in permitting judgment to go by default, all with the fraudulent purpose to affirm by said judgment the lodgment of the purchase contract, and the vendee's

interest therein, in Log Cabin Mines Company. Said purchase contract, and the vendee's interest therein, was a material, and the main asset of Mutual Gold Corporation, without which it could not carry on its corporate activities.

(4) When said action, Case No. 440-367, was instituted, a stockholders' action, to-wit: Case No. 103 233, was and ever since has been, pending in the Superior Court of the State of Washington for Spokane County, in which A. P. Batcham and E. T. Richter were plaintiffs, and Frank A. Garbutt, Mutual Gold Corporation and Log Cabin Mines Company were defendants, which action was a stockholders' suit, brought by the minority stockholders of, and on behalf of, Mutual Gold Corporation, to quiet its title to said purchase contract. The several defendants herein knew of the pendency thereof and of all the proceedings therein, and Log Cabin Mines Company, notwithstanding such knowledge, falsely alleged in the complaint in said action that Mutual Gold Corporation wrongfully claimed an interest in the purchase contract, when in fact Mutual Gold Corporation, by said dominated board of directors, wrongfully refused in said action to claim any interest, but disclaimed any interest, in the purchase contract.

#### V.

For reply unto the fourth defense in said answer, the plaintiffs admit, deny and allege: [157]

(1) Deny each and every allegation therein contained, and deny the passage of any resolution at said stockholders' meeting of August 6, 1938. The stockholders of Mutual Gold Corporation did not, unanimously or otherwise, by any resolution, authorize Mutual Gold Corporation, its board of directors, or executive officers, to organize, or cause to be organized, Log Cabin Mines Company, or any new corporation, for which Mutual Gold Corporation would subscribe for all, or any part, of the capital stock thereof, or transfer all, or any, of the assets of Mutual Gold Corporation thereto. That no call for stockholders' meeting on said date, or at any other time, informed the stockholders of Mutual Gold Corporation of any purpose, or proposal, to organize, or authorize the organization of Log Cabin Mines Company, or any new corporation, or subscribe for the capital stock, or any thereof, of Log Cabin Mines Company, or any new corporation, or transfer all, or any of the assets of Mutual Gold Corporation thereto, and no proxy by any stockholder authorized any holder thereof to vote to authorize the passage of any resolution for any of said purposes. That any such resolution would have been, and was, in violation of the laws of the State of Washington and the public policy of said state, for that no meeting was called, or held, for any of said purposes, nor lawful approval of the stockholders obtained, as required by the laws of Washington and the public policy of said state.

## VI.

For reply unto the fifth defense in said answer, the plaintiffs admit, deny and allege:

(1) Deny that they are not the real parties in interest herein; [158] deny that the real party in interest is J. A. Vance; deny that said suit was brought at his instigation, but admit that he was one, among others, who solicited the plaintiffs to act as such, and that since the action was brought he has contributed to pay the court costs and attorneys' fees incurred therein; deny that any other stockholders' suit has been brought to their knowledge, except a suit brought in the Superior Court of the State of Washington for Spokane County, in which A. P. Bateham and E. T. Richter were plaintiffs and Frank A. Garbutt, Mutual Gold Corporation and Log Cabin Mines Company were defendants, in which suit jurisdiction has not been obtained over the subject matter of the cause of action, nor over the persons of any of the defendants, except Mutual Gold Corporation, and which is not upon the cause of action sued on herein. Deny that J. A. Vance has any plan to control Mutual Gold Corporation or its property; deny that this suit was not brought in good faith, or for the benefit of the minority stockholders of the corporation; deny that the said J. A. Vance is estopped to bring this action.

Wherefore, Plaintiffs pray judgment upon their complaint herein.

W. H. ABEL

O. C. MOORE

FREDERICK D. ANDERSON

650 Subway Terminal Building,  
Los Angeles, California.

Attorneys for Plaintiffs

[Endorsed]: Filed Sept. 3, 1940. [159]

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At a stated term, to wit: The September Term, A. D. 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 16th day of September, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable: Ben Harrison, District Judge.

No. 714-BH Civil

HELEN M. SUTHERLAND, et al.,

Plaintiffs,

vs.

FRANK A. GARBUTT, et al.,

Defendants.



CHANDIS SECURITIES CO., a corp.,  
Cross-complainant,  
vs.

MUTUAL GOLD CORPORATION, a corp.,  
LOG CABIN MINES COMPANY, a corp.,  
and ALICE CLARK RYAN,  
Cross-defendants.

This cause having been heretofore heard by the Court at the trial on evidence both oral and documentary, argument of counsel, both oral and by brief, and was ordered submitted, and the Court having duly considered the record, evidence, pleadings, and the law applicable, and being fully advised in the premises now hands down and orders filed its Memorandum of Opinion, and in accordance therewith orders the cross-complaint dismissed without prejudice, and that defendants are entitled to judgment and are directed to prepare and submit findings of fact and conclusions of law. Memorandum of Opinion filed. [175]

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[Title of District Court and Cause.]

### MEMORANDUM OPINION

No useful purpose will be served in this memorandum opinion to attempt to set forth a detailed statement of the facts. This case in one sense is a re-enactment of the case of *Vance v. Mutual Gold*



Corporation, 108 P. 2d, 799, and the recital of facts, in so far as they are pertinent to the case now at issue, is adopted by me as the historical background of this case. While I appreciate the plaintiffs in the two cases are different and the purpose of the litigation is different, yet, at the same time, the present litigation is the outgrowth of the Garbutt contracts mentioned in the Vance case, and for the purpose of this memorandum opinion, I shall discuss the legal [176] effect of the transactions represented by the Garbutt contract Exhibit 13.

The court has been principally concerned as to whether or not said corporation had authority to enter into said contract and the consummation thereof, whereby it transferred all of its assets to the Log Cabin Mines Company. In other words, was said contract and the consummation thereof intra or ultra vires.

This brings me to the question as to whether the Washington statutes of 1932 apply or whether the powers and authority of this corporation were broadened by the amendments of 1933. Plaintiffs contend that the rights of the stockholders were fixed by the state of the law at the time of its incorporation and that it was beyond the power of the legislature to broaden or change said powers by subsequent legislation. I have concluded that this corporation had the powers conferred upon it by the laws of Washington at the time this agreement was entered into. Section 1, Art. XII, of the constitution of Washington provides as follows:

“Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended or repealed by the Legislature at any time, and all corporations doing business in this state may, as to such business, be regulated, limited or restrained by laws.”

Thus it will be seen that Washington followed the practice suggested in the Dartmouth College case and reserved the power to alter or amend the laws controlling existing corporations, and that said constitutional provision became a part of the contract or articles of incorporation and the incorporators and subsequent stockholders became stockholders in said corporation subject to the rights of the state to amend the statutes as provided in said constitutional provision. *Looker v. Maynard*, 179 U. S. 46; *Union Trust Co. v. Moore*, 175 Pac. 565, 567; *Duke v. Force*, 208 Pac. 67; 16 C. J. S., p. 757, Sec. 320. [177]

Sec. 3803-36 Rem. Rev. Stat. provides as follows:

“A voluntary sale, lease or exchange of all the assets of a corporation may be authorized by it upon such terms and conditions as it deems expedient, including an exchange for shares in another corporation, domestic or foreign.

“If the corporation is able to meet its liabilities then matured, such authorization shall be given at a meeting of shareholders, duly called for the purpose, and by such vote of the

shareholders as may be provided for in the articles of incorporation, or, if there be no such specific provision, then by the vote of the holders of two-thirds of the voting power of all shareholders. If the corporation be unable to meet its liabilities then matured, such authorization may be given by the vote of the board of directors.

“This section shall not be construed to authorize a conveyance or exchange of assets which would otherwise be in fraud of corporate creditors or of minority shareholders or shareholders without voting rights. (L. '33, sec. 36, p. 798.)”

This section certainly authorizes the transfer of all of the assets to the Log Cabin Mines Company in exchange for stock in the said company. In other words, the transaction was within the power of the corporation. But plaintiffs contend that the notice to stockholders was insufficient. I consider the notice sufficient and the court in the Washington case apparently under findings XII and XIII found that the resolution passed pursuant to said notice was sufficient. The notice and resolution passed in pursuance thereto were broad enough to cover the authorization of the agreement. Even if the notice was insufficient, the board of directors had the authority in view of the fact that the corporation had matured liabilities. If the plaintiffs in the case were dissatisfied with the resolution, they had their remedy under [178] Sec. 3803-41 Rem. Rev. Stat.

Plaintiffs complain that the contract and transfer was in fraud of creditors but the case of *Vance v. Mutual Gold Corporation*, 108 P. 2d 799-804, disposes of this point when the court stated:

“ \* \* \* Appellants’ situation is more favorable than at any time since the formation of the corporation. Respondents’ board of directors has not put it out of the power of the company to pay its contracts. On the contrary, the company is in a much better position to pay all of those obligations, including the notes owing to appellants.”

Even under the laws of Washington, as they existed in 1932, the transfer would not be *ultra vires* under *Logie v. Mother Lode Copper Mines Co. of Alaska*, 179 Pac. 835. I agree with defendants that this case is authority for the condemned acts of the Mutual Gold Company. The articles of the Mutual Gold were sufficiently broad to permit the transfer or exchange. Plaintiffs place great reliance upon the case of *Moore v. Los Lugos Gold Mines*, 21 P. 2d, 253, but that case involves primarily the contractual relationship between the stockholders and the corporation, wherein certain non-assessable stock was issued and presents an entirely different factual situation from the case before me or as set forth in *Logie v. Mother Lode Copper Mines*, *supra*. In this case we have in a sense no vested contractual rights involved. *Theis v. Spokane Falls Gaslight Co.*, 74 Pac. 1004, antedates the amendment of 1933 and deals with a going prosperous concern, beside it ap-

pears that this case has been specifically overruled by *Lange v. Reservation Mining and Smelting Co.*, 93 Pac. 208. The case of *Child v. Idaho Hewer Mines*, 284 Pac. 80, familiar to counsel for plaintiff also supports my conclusion. I realize that it is difficult to reconcile many of the authorities but the rights of the stockholders when made non-assessable by the articles of incorporation are always protected. (16 C. J. S. 759.) *Thompson on Corporations*, Third Ed. Vol. 1, sec. 429. [179]

It is interesting to note under the authority of *Moore v. Los Lugos Gold Mines*, supra, that the defendants might very easily be deemed guilty of laches (see page 264-5).

It must be remembered that Subdivision (b) of Article 2 of the Articles of Incorporation of Mutual Gold provides as follows:

“To acquire by purchase or exchange, or in any other manner, in the United States or in Foreign Countries, mining claims, grounds or lodes, mining and mineral rights, concessions or grants, or any interest therein, and to sell, exchange, lease or in any other manner to dispose of the whole or any part thereof or any interest therein when desirable.”

In *Pitcher v. Lone Pine-Surprise Consol. Min. Co.*, 81 Pac. 1049, the Supreme Court of Washington stated:

“The selling of these mines was not an act ultra vires. The articles of incorporation, among other things, recite, *‘The purpose for which this*



*corporation is formed are to work, operate, buy, sell, lease, locate, acquire, procure, hold and deal in mines,' etc. The trustees, therefore, had the power to sell these mines.'*

As far as I can ascertain this case has never been overruled. It would, therefore, appear under this authority that the acts of the corporation were not ultra vires.

In view of my conclusions, *Hirschfeld v. McKinley*, 78 F. (2d), 124, 131, and *Cecil B. DeMille Productions v. Woolery*, 61 F. (2d), 45, have no bearing on the case at bar.

*Coombes v. Getz*, 285 U. S. 434 and *Ettor v. City of Tacoma*, 228 U. S. 148, both involve vested rights at the time the law was changed, while in this case, the law had been changed long prior to the transactions under attack. For a fine distinction see *Rainey v. Michel*, 57 P. 2d. 932; (105 A. L. R. 148).

I do not hold there was a sale, nor do I look upon the transaction [180] as a conversion. I further feel that the consideration was adequate.

Plaintiffs insist that the transaction was not a sale, and if it was a sale, it should have been for cash. The court, as stated before, does not consider the transaction a sale but an exchange for the purpose of creating an operating company. Plaintiffs also attack the power of exchange and cite 63 A. L. R. 1004, but as heretofore pointed out the statutes and the articles of incorporation are broad enough to cover such exchange. (See other notes in 63 A. L. R. 1004.)



Plaintiffs have raised many points and showered the court with citations. I have examined the same with care and for the purpose of assisting counsel in the preparation of findings make the following comments:

1. The Log Cabin was not set up to evade the law.
2. The Log Cabin was not set up to evade a contract.
3. Mutual Gold did not incorporate Log Cabin.
4. The transaction was not a dissolution.
5. The transaction did not involve a reduction of capital stock.
6. Garbutt was not guilty of fraud, duress or coercion.

I am of the opinion that all parties acted in good faith. The directors were faced with a serious situation and can see no fraud because they preferred to deal with Garbutt instead of Vance. The plaintiffs infer fraud at every step but I find against them in that respect.

This case looks to me like the kettle calling the pot black. The entire trouble developed when Vance was unable to put over his deal. At the time he submitted his proposition to the corporation he undoubtedly thought the corporation had no other alternative but to accept it but when the directors, through their own initiative, worked out a deal with Garbutt, the fur began to fly. From that time on it has been a battle royal, and it is a reasonable inference that the real [181] party in interest in this

case is J. A. Vance. (See Mrs. Sutherland's deposition.) This inference can also be drawn from the fact that the same counsel appearing in this action also appeared in the Washington case; that Vance was personally present at the trial and that the combined holdings of the plaintiffs would not justify either the institution or prosecution of this action.

I appreciate the fact that at the trial I refused to allow the defendants to go into this phase of the case (See Transcript p. 333), but evidently under the authorities of *Pitcher v. Lone-Pine-Surprise Consol. Min. Co.*, supra; *Breeze v. Lone Pine-Surprise Consol. Min. Co.*, 81 Pac. 1050, and *Speckert v. Bunker Hill Arizona Min. Co.*, 106 P. 2d 602, I was in error.

The findings in the trial court in Washington covered much of the ground covered in this case. My conclusions are similar to Judge Greenough's and I adopt findings XII, XIII, XIV, XV and XVI. I also adopt his conclusions of law, Nos. I and IV.

By reason of a stipulation on file, the cross-complaint is dismissed without prejudice.

Defendants are entitled to judgment and are directed to prepare and submit findings of fact.

Dated: Los Angeles, California, September 16, 1941.

BEN HARRISON

Judge.

[Endorsed]: Filed Sept. 16, 1941 [182]

[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled cause came on for trial on March 18, 1941, at 10 o'clock a. m., and was thereafter on that day and on March 19, 20, and 21, 1941, tried before the Honorable Ben Harrison, Judge presiding, a trial by jury having been waived by the parties to said action. Plaintiffs did not appear in person, but appeared by their attorney Frederick D. Anderson, Esq., on whose motion W. H. Abel, Esq., and O. C. Moore, Esq. of the State of Washington were admitted by the Court to practice before it in this case and to be associated with said Frederick D. Anderson as attorneys for the plaintiffs. Defendant Frank A. Garbutt and defendant and [185] cross-defendant Alice Clark Ryan appeared in person and by their attorney David E. Hinckle, Esq.; defendants and cross-defendants Log Cabin Mines Company, a corporation, and Mutual Gold Corporation, a corporation, appeared by their attorney said David E. Hinckle, on whose motion William L. Grill, Esq. of the State of Washington was admitted by the Court to practice before it in this case and to be substituted for said David E. Hinckle as attorney for said Mutual Gold Corporation. Thereafter, and until the Court adjourned on March 20, 1941, defendant and cross-defendant Mutual Gold Corporation was represented by said William L. Grill as its attorney, at which time, on his

motion he withdrew as such attorney and said David E. Hinckle was substituted for him. Defendant and cross-complainant Chandis Securities Company, a corporation, appeared by its attorney Richard G. Adams, Esq.

Both oral and documentary evidence were introduced by the respective parties. Thereafter the cause was orally argued for the plaintiffs to the Court, and was briefed by the parties. On September 12, 1941, defendants and cross-defendants stipulated in writing with cross-complainant, by and through their respective attorneys, that the cross-complaint filed herein be dismissed without prejudice. On September 16, 1941, the Court ordered said cross-complaint dismissed without prejudice pursuant to said stipulation, and ordered judgment for the defendants against the plaintiffs.

And the Court, being fully advised in the premises, now makes its findings of fact and its conclusions of law as follows:

### Findings of Fact

#### I.

Plaintiffs Helen M. Sutherland and Charles W. Sutherland are citizens of the Dominion of Canada. Plaintiffs M. I. Higgins and Maybelle Higgins are citizens of the State of Idaho. Plaintiff Helen Maude Lorenz is a citizen of the State of Oregon. [186] Defendant Frank A. Garbutt and defendant and cross-defendant Alice Clark Ryan are citizens of the State of California.

II.

Defendant and cross-defendant Log Cabin Mines Company is a corporation organized under the laws of the State of California. Defendant and cross-complainant Chandis Securities Company is a corporation organized under the laws of the State of California.

III.

Defendant and cross-defendant Mutual Gold Corporation was organized as a corporation under the laws of the State of Washington on May 11, 1932, and is now a corporation organized and existing under said laws. On November 8, 1933, Mutual Gold Corporation was duly qualified under the laws of the State of California to engage in business therein, and ever since has been so qualified.

IV.

Mutual Gold Corporation's Articles of Incorporation provide that the objects and purposes for which the corporation is organized are, among others, to sell, exchange, lease, or in any other manner to dispose of the whole or any part of its mining claims, grounds or lodes, mining and mineral rights, concessions, or grants, or any interest therein when desirable, and to buy, sell, and otherwise deal in ores, metals, plants, machinery, tools, implements, groceries, provisions, clothing, boots and shoes, hardware, wooden and metallic ware, and all other articles and things in anywise required or capable of being used in connection with mining operations.



## V.

Mutual Gold Corporation has outstanding 2,641,182 shares of capital stock. At the time the acts complained of were performed, and at all times since, plaintiffs Helen M. Sutherland and Charles W. Sutherland each owned 333 of said shares; plaintiffs M. I. Higgins and Maybelle Higgins each owned  $333\frac{1}{3}$  of said [187] shares, and plaintiff Helen Maude Lorenz owned 500 of said shares.

## VI.

Plaintiffs brought and maintain this action as stockholders of, and for and on behalf of Mutual Gold Corporation, and for and on behalf of all the stockholders of Mutual Gold Corporation similarly situated, a controlling majority of the directors and a majority of the stockholders of that corporation being opposed to the bringing of such suit.

## VII.

The matter in controversy, exclusive of interest and costs, exceeds the sum of \$3,000.00.

## VIII.

On July 13, 1932, Chandis Securities Company, Mrs. M. N. Clark, and Alice Clark Ryan, as owners of eighteen lode gold mining claims in Mono County, California, entered into a written contract to sell said claims for \$150,000.00 to Russell F. Collins and Ben L. Collins, a copy of said contract being in evidence as Exhibit 2, and being hereby made a part of these findings. Mutual Gold Corporation was or-



ganized, and on July 18, 1932, the contract was assigned to it with the consent of the sellers, said corporation assuming the buyers' obligations. The contract was amended in 1934 by written instrument, in evidence as Exhibit 3 and hereby made a part of these findings. Mrs. M. N. Clark's interest in the contract and said claims was transferred in 1935 to Alice Clark Ryan. Said contract was amended again in 1936 by written instrument, in evidence as Exhibit 4 and hereby made a part of these findings. Frank A. Garbutt acted as agent for the owners in negotiating the contract and the amendments, and continued to represent them until October 3, 1938, but not thereafter. Said contract as amended called for a payment of \$10,000.00 on November 1 in each of the years 1937, 1938, 1939, and 1940 to the sellers, and payment of the whole balance of the purchase price on November 1, [188] 1941, and required that said claims should be developed, that when sufficient tonnage of commercial ore was in sight to justify it a mill suitable for economical milling should be erected, and that ore should be milled.

## IX.

Mutual Gold Corporation paid a total of \$20,000.00 on said purchase price and expended in excess of \$150,000.00 in the performance of its contract with the sellers up to April, 1938, at which time operations ceased because funds available for operating had been exhausted.

EXHIBIT 3 is set forth in Complaint, as Exhibit 2 thereto, at page 38.

EXHIBIT 4 is set forth in Complaint, as Exhibit 4 thereto, at page 45.

## X.

In July, 1938, Mutual Gold Corporation was in need of funds to build a mill in place of the pilot mill which it had been operating. Thereupon Lloyd J. Vance, son of J. A. Vance, for himself and J. A. Vance, submitted to Mutual Gold Corporation in writing a plan which is in evidence as part of Exhibit 5 and is made a part of these findings. At a meeting held July 18, 1938, the directors of Mutual Gold Corporation adopted a resolution as follows:

“Resolved that the offer of Lloyd Vance as submitted to this meeting, (copy of which is spread upon the minutes) when changed and altered in conformity with the changes hereinbefore set out in these minutes, be and the same is hereby received, approved and recommended to the stockholders for acceptance; that the annual meeting of the stockholders be called and held as soon as possible and not later than the 6th day of August, A. D., 1938, at the hour of 11:00 o’clock A. M. for the purpose of electing a Board of Directors and approving and acting upon the offer of the said Lloyd Vance for the sale and disposition of the undivided one-half interest in and to the holdings of the company, and authorizing and empowering the Board of Directors to sell or otherwise dispose of the whole or [189] any part of the assets of the corporation at such time or times and on such terms and conditions as they may deem adequate, and to form and enter into any working

agreement along the lines as contemplated by the offer of said Lloyd Vance, or such other or different agreement as they may, in their absolute discretion deem advisable, and to transact any and all other business that may come before said meeting, and that the Secretary be and she is hereby authorized, empowered, and instructed to set the date of such meeting at the earliest moment possible as provided by law and the by-laws of this corporation, and that a letter be sent with the notice of such meeting to all the stockholders advising them fully with respect to the necessity of some such action and covering the activities of the company since the last report to them made under date of April 5, 1938, such *legyer* to be approved and signed by Mr. J. E. Stiegler as President; and that Wednesday, the 20th day of July A. D., 1938, at 12:00 o'clock noon be and the same is hereby fixed as a recorded date for the determination of the shareholders entitled to notice of such meeting."

Said Vance offer was supplemented by a letter written by Lloyd Vance to the corporation on August 12, 1938, said letter being in evidence as Exhibit 98 and being hereby made a part of these findings. Said J. A. Vance was the largest creditor, a large stockholder, a director, and vice president of Mutual Gold Corporation, and had entered into a contract dated August 29, 1936, with said corpora-

tion to act as its general manager, said contract being in evidence as Exhibit 78.

## XI.

On or about July 20, 1938, notice of the annual meeting of stockholders to be held on August 6, 1938, in Spokane, Washington, was mailed to the stockholders of the Mutual Gold Corporation. Said notice is in evidence as Exhibit 6, and sets forth that the [190] meeting would be held—

“To authorize, empower and direct the Board of Directors to accept the offer of Lloyd Vance as outlined in the letter of the President under date of July 20th, 1938, a copy of which letter is herewith enclosed, and by reference made a part hereof, and/or authorize, empower and direct the Board of Directors to make and enter into such other or different deal with Lloyd Vance, or any other person or corporation, with respect to all of the assets of this corporation, the management, control and operation thereof, the division of the profits thereof or otherwise as such Board of Directors shall, in their absolute discretion, deem expedient, advisable or desirable.

“To authorize and empower the Board of Directors to sell, lease, exchange or otherwise dispose of all of the assets of this corporation at such time or times, for such price and upon such terms and conditions, for cash or otherwise, as they shall, in their absolute discretion

deem expedient, advisable or desirable, including the exchanging for shares in another corporation, domestic or foreign.”

XII.

The letter of the President under date of July 20, 1938, referred to in said notice, is in evidence as Exhibit 8, is addressed to the stockholders, and accompanied the said notice. After summarizing the Lloyd Vance proposal, it stated:

“You will be asked to approve the offer (referring to that of Lloyd Vance) and authorize the Board to execute such contract as they shall deem advisable, and will also be requested to authorize them to sell or otherwise dispose of the whole or any part of the assets of the Mutual Gold Corporation at such time or times, and on such terms and conditions as they shall, in their absolute discretion, [191] deem adequate so that they may be placed in a position to dispose of the whole or any part of the property, and have full authority to do so should they find it necessary or advisable.”

XIII.

The meeting of the stockholders was held August 6, 1938, pursuant to said notice. The stock present and entitled to vote was as follows:

Present in person.....	856,404	shares
Present by proxy.....	1,105,953	“
Present by endorsed certificates.....	22,250	“
	<hr/>	
Total present and entitled to vote.....	1,984,607	“



The total issued outstanding stock was 2,633,830 shares. At said meeting 649,223 shares or said issued stock was not present or represented, and did not vote. Each of the proxies voted thereat was in the form in evidence as Exhibit 7, hereby made a part of these findings, which form was as follows:

“PROXY

“Know All Men by These Presents; That I, the undersigned hereby constitute and appoint J. E. Stiegler, or J. A. Vance or..... with power of substitution, my attorneys and proxies to appear and vote at the Annual Meeting of Stockholders of the Mutual Gold Corporation to be held at 401 Fernwell Building, Spokane, Washington, Saturday, August 6th, 1938, at 11:00 o'clock A. M., and at any and all adjournments thereof for the following purposes:

“1. To elect a Board of Directors.

“2. To approve, ratify and confirm the acts and proceedings of the Board of Directors and Officers of the corporation, since the last Annual Meeting of Stockholders. [192]

“3. To authorize, empower and direct the Board of Directors to accept the offer of Lloyd Vance as outlined in the letter of the President under date of July 20th, 1938, a copy of which letter is herewith enclosed, and by reference made a part hereof, and/or authorize, empower and direct the Board of Directors to make and



enter into such other or different deal with Lloyd Vance, or any other person or corporation, with respect to all of the assets of this corporation, the management, control and operation thereof, the division of the profits thereof or otherwise, as such Board of Directors shall, in their absolute discretion, deem expedient, advisable or desirable.

“4. To authorize and empower the Board of Directors to sell, lease, exchange or otherwise dispose of all of the assets of this corporation at such time or times, for such price and upon such terms and conditions, for cash or otherwise, as they shall, in their absolute discretion deem expedient, advisable or desirable, including the exchanging for shares in another corporation, domestic or foreign.

“5. To take action upon and transact any other business which may properly and lawfully come before the meeting.

“The undersigned hereby ratifies and confirms all that either of said persons, or their substitute, may lawfully do at said meeting.

‘Dated this 21st day of July, A. D., 1938.

(Seal)

.....  
“Witness:

.....”

XIV.

At said meeting, the following resolution was adopted, [193] all of said 1,984,607 shares being cast therefor:

“Resolved that the Board of Directors of this corporation be and they are hereby authorized, empowered, and directed to sell, lease, deal with, operate, exchange, or otherwise dispose of, to any person, persons or corporation desiring to purchase, lease, deal with, exchange, or operate same, any part of or all of the assets of this corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection which in their judgment they may deem necessary or advisable.”

#### XV.

At the time said resolution was adopted on August 6, 1938, Mutual Gold Corporation was not able to meet its obligations then matured, the amount of which is set out in paragraph XXXV of these findings, and at no time thereafter and prior to the performance of the acts in this action complained of was it able to meet them.

#### XVI.

In August, 1938, the directors of the corporation sought and obtained from Frank A. Garbutt an agreement to finance the corporation on certain terms and conditions which were incorporated in a contract between him and the corporation dated

September 2, 1938. Said contract provided that he was to take over the corporation's assets and develop and operate its mining properties. It is in evidence as Exhibit 13, and is hereby made a part of these findings.

#### XVII.

Pursuant to resolution of the board of directors of Mutual [194] Gold Corporation passed September 7, 1938, a special meeting of the stockholders was called for September 24, 1938, for the purpose of ratifying or refusing to ratify the contract of September 2, 1938, between Mutual Gold Corporation and Frank A. Garbutt. Notice thereof, in evidence as Exhibit 17, and form of proxy, in evidence as Exhibit 18, were mailed to the stockholders. At a meeting of the board of directors of Mutual Gold Corporation held September 19, 1938, the Board of Directors adopted a motion requiring the secretary to advise the stockholders that said meeting of stockholders called for September 24, 1938, had been called off by the board. Said proposed meeting of September 24, 1938, was never held.

#### XVIII.

On September 22, 1938, said contract with Frank A. Garbutt was re-executed pursuant to a resolution of said board of directors adopted at a meeting regularly called and held on September 7, 1938, which provided that—

“In view of the authority and power given to the board of directors by the stockholders at

EXHIBIT 13 is set forth in Complaint, as Exhibit 6 thereto, at page 51.

EXHIBIT 17 is set forth in Reporter's Transcript at page 295.

EXHIBIT 18 is set forth in Reporter's Transcript at page 296.

a special meeting of the stockholders called on the 6th day of August, 1938, and in view of the present financial condition of the company, this corporation do, and it hereby does, accept that certain contract bearing date the 2d day of September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, and all of the terms and provisions thereof; and that the president of this corporation, Mr. J. E. Stiegler, be and he hereby is authorized and directed to execute said contract, if the previous ratification thereof is not legally sufficient, for and on behalf of this corporation, and to execute any and all documents, papers, bills of sale, deeds, and conveyances necessary to make said document legally effective and to carry out the terms and conditions [195] and provisions thereof.”

### XIX.

Mutual Gold Corporation executed its mining deed bearing date of September 21, in evidence as Exhibit 23, conveying said eighteen claims and others to Frank A. Garbutt, and executed its assignment bearing date of September 21, 1938, in evidence as Exhibit 24, transferring said purchase contract of July 13, 1932, to Mr. Garbutt, and executed its bill of sale bearing date of September 22, 1938, in evidence as Exhibit 25, transferring to Mr. Garbutt said corporation's mining machinery, tools, supplies, and equipment, including its automotive

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EXHIBIT 23 is set forth in Complaint, as Exhibit 7 thereto, at page 58.

EXHIBIT 24 is set forth in Complaint, as Exhibit 8 thereto, at page 60.

EXHIBIT 25 is set forth in Complaint, as Exhibit 9 thereto, at page 62.

equipment. Said deed, assignment, and bill of sale were made to Frank A. Garbutt in trust for a corporation to be formed.

XX.

Log Cabin Mines Company was organized under the laws of the State of California on October 18, 1838, at the instance and under the direction of Frank A. Garbutt, with a capital stock of 10,000 shares having a par value of \$1.00 a share. The majority of the board of directors were at all times selected by Frank A. Garbutt and he at all times after the issue of its capital stock owned a majority thereof.

XXI.

Said Log Cabin Mines Company was not organized by or for Mutual Gold Corporation. The organization and incorporation of Log Cabin Mines Company or any other new corporation by, or for, Mutual Gold Corporation was never submitted to, or authorized by, the stockholders of Mutual Gold Corporation, at any meeting called or held for that purpose.

XXII.

Said Log Cabin Mines Company was organized for the express purpose of acquiring all the property and assets of Mutual Gold Corporation and operating the same, and it has never engaged in [196] any other business than operating said properties.



## XXIII.

Frank A. Garbutt's relationship to Log Cabin Mines Company at all times subsequent to its organization was as promotor, trustee, general manager, principal stockholder, and principal creditor.

## XXIV.

It was impossible to operate the Mutual Gold Corporation properties on the proceeds of a capitalization of Log Cabin Mines Company of ten thousand dollars (\$10,000.00) at one dollar (\$1.00) per share, which fact was at all times well known to Frank A. Garbutt and all other parties to this litigation.

## XXV.

Frank A. Garbutt proceeded to advance money and to do the things he had agreed to do, including the payment to the sellers of \$10,000.00 on November 1, 1938, for Mutual Gold Corporation.

## XXVI.

On October 31, 1938, Frank A. Garbutt gave Mutual Gold Corporation notice of termination of said contracts of September 2, 1938, and September 22, 1938, and at the same time Mutual Gold Corporation and Frank A. Garbutt entered into an agreement dated November 1, 1938, terminating said contracts and making Frank A. Garbutt trustee for Mutual Gold Corporation of the transferred properties. The action of the officers in executing said agreement was approved by the board of directors of Mutual Gold Corporation November 7, 1938. Said



notice of October 31, 1938, and said agreement of November 1, 1938, are in evidence as Exhibit 32 and are hereby made a part of these findings.

### XXVII.

On December 17, 1938, the board of directors of Mutual Gold Corporation adopted the following resolution:

“Whereas this corporation has been negotiating for some few weeks with Mr. Frank A. Garbutt for a contract [197] along the lines of the contract made with him on or about September 2 and 22, 1938; and Whereas, the terms of such contract have been practically agreed upon; and Whereas, the form of such contract has been read to and studied by the board; and Whereas, it will be for the best interests of this company that said contract be entered into; now, therefore, Be It Resolved that this company enter into said contract with said Frank A. Garbutt, which contract has been fully read, discussed and studied by the board; and Be It Further Resolved, that the President of this corporation be and he hereby is authorized and directed to deliver said contract to said Frank A. Garbutt and to Log Cabin Mines Company, a corporation.”

### XXVIII.

Thereafter Mutual Gold Corporation entered into a contract with Frank A. Garbutt and Log Cabin Mines Company, dated December 17, 1938, whereby Frank A. Garbutt became trustee of said transferred

properties for Log Cabin Mines Company, and wherein for a valuable consideration the said Log Cabin Mines Company undertook to become the operating company in carrying on the development and operation of said mining property. Said contract is in evidence as Exhibit 40, and is hereby made a part of these findings.

## XXIX.

At the next annual meeting of Mutual Gold Corporation's stockholders held on February 1, 1939, the contract of December 17, 1938 (Exhibit 40 above referred to) was ratified by a resolution of the stockholders. Neither the notice of said meeting, in evidence as Exhibit 94 and hereby made a part of these findings, nor the proxy form solicited by the management, in evidence as Exhibit 95 and hereby made a part of these findings, contained any reference to such proposed action of the stockholders. The stock present at said meeting and entitled to vote was as follows: [198]

Present in person	164,114 shares
Present by proxy	2,149,342 "
	-----
Total present and entitled to vote	2,313,456 "

The vote upon said resolution ratifying the said contract of December 17, 1938, was as follows:

Shares voting for	1,458,969 $\frac{1}{3}$
Shares voting against	841,153 $\frac{2}{3}$

EXHIBIT 40 is set forth in Complaint, as Exhibit 11 thereto, at page 69.

EXHIBIT 94 is set forth in Reporter's Transcript at page 606.

EXHIBIT 95 is set forth in Reporter's Transcript at page 607.

Said contract was also approved by resolution of the board of directors held on June 6, 1939.

XXX.

On October 20, 1938, S. C. Hall, a friend of Frank A. Garbutt's made a subscription to the capital stock of Log Cabin Mines Company. He cancelled the subscription on November 2, 1938. No further stock subscription was made until on or about April 17, 1939, when Mutual Gold Corporation subscribed for the entire capital stock and borrowed ten thousand dollars (\$10,000.00) from Frank A. Garbutt to pay therefor. Frank A. Garbutt and Mutual Gold Corporation executed certain deeds, assignments, and bills of sale to Log Cabin Mines Company, the first of which was on March 10, 1939, said documents being in evidence as Exhibits 45, 46, 47, 52, and O. Thus, from the date of its organization to March 10, 1939, Log Cabin Mines Company was entirely without assets.

XXXI.

The subscription to and purchase of said Log Cabin Mines Company shares by Mutual Gold Corporation had been authorized by resolution of Mutual Gold Corporation's board of directors, and the borrowing of said \$10,000.00 from Frank A. Garbutt to pay for said shares had been authorized by resolution of said board on October 21, 1938. Said resolution read as follows:

“Be It Further Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill are hereby authorized

and directed to arrange, if they deem it advisable, for the organization of [199] a new corporation under the laws of California or any other state, with a par value of \$10,000, divided into 10,000 shares, or such other par value or number of shares as they may deem advisable, and to subscribe to said shares for and on behalf of the Mutual Gold Corporation.

Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill be and they are hereby authorized and directed to negotiate a loan in the sum of \$10,000 to pay for the subscription of \$10,000 to the new company in the event that a new company is organized.”

### XXXII

Said stock was issued on or about April 17, 1939, to Mutual Gold Corporation for \$10,000.00 cash, and was deposited in escrow in Los Angeles, California, under order of the California Commissioner of Corporations. Thereafter, Mutual Gold Corporation transferred 5001 of said shares to Frank A. Garbutt pursuant to the terms of said contract of December 17, 1938. Said Mutual Gold Corporation still retains the remaining 4,999 of said shares, which are still in said escrow and have never been pledged or otherwise encumbered.

### XXXIII.

The said deeds, assignments, and bills of sale to Log Cabin Mines Company transferred to that com-

pany both those of Mutual Gold Corporation's assets that had been previously transferred to Frank A. Garbutt and those which had not, with the exception of some tailings and the surface of the ground on which they lay. Said transfers to Log Cabin Mines Company were in exchange for its stock issued to Mutual Gold Corporation.

XXXIV.

The transfer of said assets of Mutual Gold Corporation to Log Cabin Mines Company was made upon a consideration which was not cash. [200]

XXXV.

The obligations of Mutual Gold Corporation at the time said transfers were made and on August 6, 1938 and at all times thereafter were (1) approximately \$1,835.37 absolutely due and payable; (2) open accounts on production certificates \$1,008.07, with interest thereon, not due; (3) \$30,000.00 represented by production notes according to the terms of the form of production note in evidence as Exhibit 69 and made a part of these findings, (4) open accounts with stockholders \$22,785.04 not due; and (5) the unpaid balance of the purchase price under said contract of July 13, 1932.

XXXVI.

On April 17, 1939, said Log Cabin Mines Company employed Frank A. Garbutt as manager, and he has so acted at all times since without salary.



## XXXVII.

The said contract executed on September 2, 1938 and reexecuted on September 22, 1938, and said contract executed as of December 17, 1938 were made by the board of directors of Mutual Gold Corporation with the purpose and intent that out of the net proceeds from said mining property, Mutual Gold Corporation would pay all its outstanding indebtedness; and on August 23, 1939, in order that there might be no question as to their intention, the said board of directors entered into a supplemental agreement with Frank A. Garbutt and Log Cabin Mines Company specifically providing that after the repayment of the amounts advanced by the operating company for labor and machinery and any other expenses as in said contract provided, the net proceeds from said mining property belonging and accruing to Mutual Gold Corporation should first be paid to discharge said indebtedness. Said supplemental agreement is in evidence as Exhibit J, and is hereby made a part of these findings.

## XXXVIII.

Since the making of said contracts, Log Cabin Mines Company and Frank A. Garbutt have expended labor and money in the de- [201] velopment of the said mining property, installing thereon a new mill capable of milling in excess of 100 tons of ore per day, together with other proper machinery and equipment, so that the total expense of equipping and developing said property by the



said Log Cabin Mines Company and Frank A. Garbutt since the making of said contracts has exceeded the sum of \$100,000.00. They have milled approximately 48,500 tons of ore, for which approximately \$265,000.00 has been received. They have paid the owners \$20,000.00 out of this on the purchase price of the said eighteen claims, and substantially all the remainder has been expended in operating, developing, and protecting the mining property. None of the money advanced by Frank A. Garbutt has been repaid to him and no interest thereon has been paid, except that Mutual Gold Corporation is entitled to a credit of \$5,001.00 for the 5,001 shares of Log Cabin Mines Company stock transferred to him. All ore extracted from the property by Frank A. Garbutt and Log Cabin Mines Company, and all proceeds therefrom, have been accounted for to Mutual Gold Corporation.

## XXXIX.

None of the said acts of the Mutual Gold Corporation or of its officers or directors, or of Log Cabin Mines Company or of its directors or officers, or of Chandis Securities Company or of its directors or officers, or of Frank A. Garbutt, or of Alice Clark Ryan, was performed to evade, or circumvent, or violate the laws of the State of Washington or any law, or to evade Mutual Gold Corporation's said contract of August 29, 1936 with J. A. Vance or any other contract or obligation of Mutual Gold Corporation, or to evade any contract or obligation of

any of the other said defendants, or to injure Mutual Gold Corporation or its stockholders or creditors or any one, or with the intent to defraud any one of any right or property, or pursuant to any conspiracy; but each act of all said defendants and officers and di- [202] rectors was done in good faith and in the belief that the best interest of Mutual Gold Corporation and its stockholders and creditors was being served thereby, and with the intent that such interests would be so served.

#### XL.

No act of any of said corporations or of their respective officers or directors, or of Alice Clark Ryan, was induced or influenced by any fraud, duress, or coercion of Frank A. Garbutt or of any other person.

#### XLI.

Frank A. Garbutt has not converted any mineral, ore, or other property of Mutual Gold Corporation's to his own use.

#### XLII.

Said contract of July 13, 1932 for the purchase of said mining claims is in good standing and not in danger of being terminated because of any failure to pay the sellers any installment payment on the purchase price of said claims.

From the foregoing Findings of Fact, the court makes the following—

## CONCLUSIONS OF LAW

### I.

The transactions set forth in the foregoing findings of fact constituted an exchange of the assets of Mutual Gold Corporation for half the capital stock, less one share, of Log Cabin Mines Company, and did not constitute and were not equivalent to a sale of the assets of, or a reduction of the capital stock of, or a dissolution of Mutual Gold Corporation.

### II.

Such exchange was and is authorized by the Articles of Incorporation of Mutual Gold Corporation and by its stockholders [203] and directors, and by the laws of the State of Washington.

### III.

Mutual Gold Corporation did not by such exchange put it out of its power to pay its obligations out of net production receipts accruing from the sale of ores or minerals extracted from ores from its mining property, and did not jeopardize or interfere with the rights of its creditors or its stockholders.

### IV.

The board of directors of Mutual Gold Corporation, in authorizing the execution of the said contracts and instruments for the development and operation of its mining properties acted without fraud and in the exercise of their sound discretion.

## V.

The acts of the defendants did not constitute fraud, either actual or constructive.

## VI.

There was adequate consideration for said exchange and the executing of said contracts and instruments; and said exchange, contracts, and instruments are valid and legal.

## VII.

The force, effect, and validity of the purchase contract of July 13, 1932 have not been destroyed or impaired by any act of the defendants.

## VIII.

Defendants are entitled to judgment that plaintiffs take nothing by this action and that defendants shall recover their costs from the plaintiffs.

## IX.

By reason of the stipulation filed herein, cross-defendants are entitled to a judgment that the cross-complaint be dismissed without prejudice and without costs to either cross-defendants or cross-complainant. [204]

Let judgment be rendered and entered accordingly.

Done in open court this 30 day of October, 1941.

BEN HARRISON

Judge

[Endorsed]: Filed Oct. 30, 1941. [205]

In the District Court of the United States  
Southern District of California  
Central Division

No. 714-BH

HELEN M. SUTHERLAND, CHAS. W. SUTHERLAND, M. I. HIGGENS, MAYBELLE HIGGENS, and HELEN MAUDE LORENZ,  
Plaintiffs,

vs.

FRANK A. GARBUTT, CHANDIS SECURITIES COMPANY, a corporation, ALICE CLARK RYAN, LOG CABIN MINES COMPANY, a corporation, and MUTUAL GOLD CORPORATION, a corporation,  
Defendants.

CHANDIS SECURITIES COMPANY, a corporation,  
Cross-Complainant,

vs.

MUTUAL GOLD CORPORATION, a corporation, LOG CABIN MINES COMPANY, a corporation, and ALICE CLARK RYAN,  
Cross-Defendants.

### JUDGMENT

The above-entitled cause came on for trial on March 18, 1941, at 10 o'clock a.m., and was thereafter on that day and on March 19, 20, and 21, 1941

tried before the Honorable Ben Harrison, Judge presiding, a trial by jury having been waived by the parties to said action. Plaintiffs did not appear in person, but appeared by their attorney Frederick D. Anderson, Esq., on whose motion W. H. Abel, Esq. and O. C. Moore, Esq., of the State of Washington were admitted by the Court to practice before it in this case and to be associated with said Frederick D. Anderson as attorneys for the plaintiffs. Defendant Frank A. Garbutt and defendant and [207] cross-defendant Alice Clark Ryan appeared in person and by their attorney David E. Hinckle, Esq.; defendants and cross-defendants Log Cabin Mines Company, a corporation, and Mutual Gold Corporation, a corporation, appeared by their attorney said David E. Hinckle, on whose motion William L. Grill, Esq. of the State of Washington was admitted by the Court to practice before it in this case and to be substituted for said David E. Hinckle as attorney for said Mutual Gold Corporation. Thereafter, and until the Court adjourned on March 20, 1941, defendant and cross-defendant Mutual Gold Corporation was represented by said William L. Grill, as its attorney, at which time, on his motion he was permitted by the Court to withdraw as such attorney and said David E. Hinckle was substituted for him. Defendant and cross-complainant Chandis Securities Company, a corporation, appeared by its attorney Richard G. Adams, Esq.

Both oral and documentary evidence were introduced by the respective parties. Thereafter the



cause was orally argued for the plaintiffs to the Court, and was briefed by the parties. On September 12, 1941, defendants and cross-defendants stipulated in writing with cross-complainant, by and through their respective attorneys, that the cross-complaint filed herein be dismissed without prejudice.

The Court, being fully advised in the premises, and having heretofore signed and filed its findings of fact and conclusions of law, now renders its judgment in accordance therewith.

It is hereby ordered, adjudged, and decreed

1. That plaintiffs take nothing by their action, and that defendants have and recover from the plaintiffs said defendants' costs including daily Reporter's fees and disbursements in said action in the sum of \$88.63.

2. That the cross-complaint filed herein be dismissed without prejudice and without costs to either cross-defendants or [208] cross-complainant.

Dated this 30th day of Oct., 1941.

BEN HARRISON

Judge

Judgment entered Oct. 30, 1941.

Docketed Oct. 30, 1941.

Book C.O. #7 Page 229.

R. S. ZIMMERMAN,

Clerk,

By MURRAY E. WIRE,

Deputy.

[Endorsed]: Filed Oct. 30, 1941. [209]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Helen M. Sutherland, Charles W. Sutherland, M. I. Higgins, Maybelle Higgins and Helen Maude Lorenz, plaintiffs above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from paragraph 1 of the final judgment entered in this action on October 30, 1941, which is in the following words and figures, to wit:

“It is hereby ordered, adjudged and decreed:

“1. That plaintiffs take nothing by their action and the defendants have and recover from the plaintiffs said defendants' costs including daily Reporter's fees and disbursements in said action in the sum of \$88.63.”

Dated this 26th day of January, 1942.

W. H. ABEL,

O. C. MOORE,

FREDERICK D. ANDERSON

By FREDERICK D. ANDERSON

Attorneys for Plaintiffs

Address: 650 Subway Terminal  
Bldg.

Los Angeles, California.

Telephone: MICHIGAN 0804

[Endorsed]: Copies mailed to David E. Hinckle and Richard G. Adams, Attys. for Defts.

[Endorsed]: Filed Jan. 26, 1942. R. S. Zimmerman, Clerk. By E. L. S., Deputy. [211]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT [1 (39)]

PLAINTIFFS' EXHIBIT 1

ARTICLES OF INCORPORATION OF  
MUTUAL GOLD CORPORATION

Know all men by these presents, that we, the undersigned, Ben L. Collins and Harley Little, citizens of the United States and citizens and residents of the State of Washington, and Russell F. Collins, citizen of the United States and resident of the State of Idaho, have this day voluntarily associated ourselves together for the purpose of incorporating under the Laws of the State of Washington and do hereby certify in triplicate as follows:

Article I.

The name of this corporation shall be Mutual Gold Corporation.

Article II.

The objects and purposes for which this corporation is organized are as follows:

a. To search, prospect and explore for ores and minerals of all kinds, to locate mining claims, grounds and lodes in the United States of America and the territories thereof, and in Foreign Countries, and to record the same pursuant to the mining laws of the District and Country of their location; to work and develop mining claims, grounds and lodes; to crush, concentrate, smelt, refine, dress,

amalgamate and prepare for market ores, metals and mineral substances of all kinds, and to construct and maintain power houses, mills, and concentrating reduction and refining plants and buildings of every kind and nature, and to install therein, or in connection therewith, such machinery and appliances as may be necessary or convenient for carrying out the objects and purposes of the corporation.

b. To acquire by purchase or exchange, or in any other manner, in the United States or in Foreign Countries, mining claims, grounds or lodes, mining and mineral rights, concessions or grants, or any interest therein, and to sell, exchange, lease or in any other manner to dispose of the whole or any part thereof or any interest therein when desirable.

c. To acquire by location, purchase, exchange or in any other manner water and water rights, reservoirs, aqueducts, mill sites, power sites, and rights of way which may be necessary or convenient in the development and operation of its mining properties, or for other uses in connection therewith.

d. To buy, sell, and otherwise deal in ores, metals, plants, machinery, tools, implements, groceries, provisions, clothing, boots and shoes, hardware, wooden and metallic ware, and all other articles and things in anywise required or capable of being used in connection with mining operations, and to manufacture all such articles when required.

e. To acquire, construct, carry out, maintain, improve, equip, manage, control, or superintend any roads, ways, private railways, private tramways, bridges, reservoirs, aqueducts, pipe lines, power plants, hydraulic works, factories, warehouses and dwelling houses that may be required for the uses and purposes of the corporation.

f. To acquire, own, hold, buy, sell and in every other manner deal in the shares of stock of other corporations, and to exchange shares of its own capital stock for any of the things, rights or properties which it might otherwise lawfully acquire and hold as enumerated in this article.

g. To borrow money for the purpose of acquiring, improving, developing, operating and maintaining its mining properties, and for all other lawful purposes in connection therewith, including the payment of debts and expenses, and to issue therefor its notes, bonds or other obligations in writing, and to secure the same by mortgage or deeds of trust upon all or any part of its personal property and real estate and the appurtenances thereto.

### Article III.

The amount of capital stock of said corporation is \$50,000.00 divided into five million shares of the par value of one cent per share.

### Article IV.

The corporation shall be managed by a Board of three Directors which number may be increased

to seven at any regular stockholders' meeting or special stockholders' meeting called for that purpose; the names and addresses of the trustees who shall manage said corporation until July 18th, 1932, are as follows:

Ben L. Collins	Spokane, Wash.
Harley Little	Spokane, Wash.
Russell F. Collins	Wallace, Idaho

#### Article V.

The term of existence of said corporation shall be fifty years.

#### Article VI.

The principal place of business of said corporation shall be the City of Spokane, Washington, but meetings of the Board of Directors may be held at such other places within or without the State of Washington as may be provided in the By-laws or by resolution of the Board of Directors.

In witness whereof, we have hereunto set our hands this 11th day of May, 1932.

(Signed) BEN L. COLLINS

(Signed) HARLEY LITTLE

(Signed) RUSSELL F. COLLINS

State of Washington,  
County of Spokane—ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby cer-



tify that on this 11th day of May, 1932, personally appeared before me Ben L. Collins and Harley Little, to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes herein mentioned.

Given under my hand and official seal the day and year last above written.

(Notarial Seal)

(Signed) E. D. WELLER

Notary Public in and for the State of Washington,  
residing at Spokane.

State of Washington,  
County of King—ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this 11th day of May, 1932, personally appeared before me Russell F. Collins, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal the day and year last above written.

(Notarial Seal)

(Signed) OTIS B. HARLAN

Notary Public in and for the State of Washington,  
residing at Seattle.

ARTICLES OF AMENDMENT  
OF  
MUTUAL GOLD CORPORATION

At a special meeting of the stockholders of Mutual Gold Corporation, called for that purpose, held at the office of the company in Spokane, Washington on June 18th, 1934, there being represented at said meeting 3,285,612 shares of stock, either in person or by proxy, out of 4,562,935 shares outstanding. It was unanimously voted to amend the articles of incorporation to increase the authorized capital of said corporation as follows:

That Article III of said articles of incorporation, reading as follows, to-wit:

“Article III”

“The amount of capital stock of said corporation is \$50,000.00 divided into five million shares of the par value of one cent per share.”

be and the same is hereby amended to read as

Article III.

The amount of capital stock of said corporation is \$70,000.00 divided into seven million shares of the par value of one cent per share.

Dated at Spokane, Washington, June 20th, 1934.

MUTUAL GOLD CORPORATION

(Signed) R. P. WOODWORTH

Vice-President.

Attest:

BEN. L. COLLINS

Secretary

State of Washington,  
County of Spokane—ss.

R. P. Woodworth and Ben L. Collins, being each first duly sworn, says: That they are respectively Vice President and Secretary of Mutual Gold Corporation; that the foregoing is a true and correct report of the special meeting of stockholders of said corporation called for the purpose of amending the articles of incorporation to increase the authorized capital of said company.

(Signed) R. P. WOODWORTH

(Signed) BEN L. COLLINS

Subscribed and sworn to before me this 20th day of June, 1934.

(Signed) E. D. WELLER

Notary Public for Washington Residing at Spokane

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF THE MUTUAL GOLD CORPORATION

At a regular annual meeting of the stockholders of Mutual Gold Corporation, held in Spokane, Washington on February 5th, 1936, notice thereof being regularly given, which notice specified the purpose of amending the articles of incorporation relating to the capital of said corporation, the following resolution was regularly offered and seconded:

Resolved, that Articles III of the Articles of Incorporation of Mutual Gold Corporation be amended to read as follows:

## “Article III.

“The amount of the capital stock of said corporation is \$157,500.00 as follows:

“a. \$132,500.00 divided into 2,650,000 shares of common stock of the par value of 5¢ per share.

“b. \$25,000.00 divided into 100,000 shares of Class A common stock of the par value of 25¢ per share, which shall have equal voting rights with the other common stock and shall receive a preference dividend of 25¢ per share before any dividend shall be declared upon the other common stock and after such preference dividend shall have been fully paid, the shares of both classes of stock shall be equal in all respects.”

Upon said resolution being put to a vote, out of a total of 6,315,171 shares outstanding 4,276,589 shares, present in person and by proxy, voted in favor of said resolution and 196,023 shares, present in person or by proxy, voted against said resolution.

It appearing that more than two-thirds of the outstanding stock voted for said resolution, Article III of said Articles of Incorporation was declared amended in accordance with the resolution.

Thereupon, it was moved, seconded and unanimously carried by vote of 4,472,612 shares that the outstanding common stock of the corporation be

exchanged for the new common stock on the basis of three shares of the outstanding common stock for one share of the new common stock.

(Signed) R. P. WOODWORTH

Vice President

(Signed) J. F. HALL

Secretary

State of Washington,  
County of Spokane—ss.

R. P. Woodworth, as Vice-president and J. F. Hall, as Secretary of Mutual Gold Corporation, being each duly sworn on oath depose and say: That the foregoing certificate is a true and correct copy of the proceedings of the annual meeting of the stockholders of Mutual Gold Corporation relating to the amendment of Articles of Incorporation, increasing the capital of said corporation and reducing the number of shares and providing for the basis of reduction of said shares.

(Signed) R. P. WOODWORTH

(Signed) J. F. HALL

Subscribed and sworn to before me this 8th day of February, 1936.

(Signed) E. D. WELLER

Notary Public in and for the State of Washington,  
residing at Spokane.

BY-LAWS OF THE MUTUAL GOLD  
CORPORATION

## Article I—Stockholders

Sec. 1. The annual meeting of the stockholders of this Company for the election of Directors shall be held at the office of the Company in the City of Spokane, Spokane County, Washington, on the first Monday in June of each year if said day is not a legal holiday, but if a legal holiday then on the day following.

Sec. 2. Special meetings of the stockholders may be called to be held at the office of the Company at its principal place of business, at any time by the President, or by a majority of the Board of Directors. It shall be the duty of the President to call a special meeting upon the written request of the holders of two-fifths of the stock of the corporation.

Sec. 3. In addition to the notice required by law, notice of meetings written or printed for every regular or special meeting of the stockholders, shall be signed by the President or Secretary and mailed by the Secretary of the Company to the last known address of each stockholder as shown by the books of the Company, not less than ten days before such meeting, and if for a special meeting, such notice shall state the object or objects thereof, and no other business shall be transacted at such special meeting.



Sec. 4. A quorum at any meeting of the stockholders, which consists of a majority of stock issued, represented either in person or by proxy. A majority of such quorum shall decide any question that may come before the meeting. Every person acting therein in person or by proxy or by representative, must be a bona fide stockholder, having stock in his own name on the stock books of the corporation, at least ten days prior to such meeting.

Sec. 5. Any stockholder may vote his stock by proxy in writing, given to any other stockholder of the Company. No person shall vote as a proxy unless he is a stockholder authorized to act in said meeting, and shall present to and file with the Secretary, written authority so to do, signed by the stockholder whom he represents.

Sec. 6. At such annual meeting of the stockholders of the Company for the election of Directors three Directors shall be elected from among the holders of stock, unless the number of Directors shall have been changed to seven, in which case seven shall be so elected, who shall serve for one year and until their successors are elected, and qualified. At least one of which Directors must be a citizen and actual bona fide resident within the State of Washington. All elections of Directors must be by ballot and the vote of the stockholders representing a majority of the issued capital stock shall be necessary to a choice. If for any reason Directors are not elected at the annual meeting of

the stockholders, a special meeting shall be called for that purpose within thirty days thereafter, at which time Directors shall be elected in all respects as at the annual meeting. At all elections for Directors each stockholder of record shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are Directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit.

Sec. 7. The order of business at the annual meetings, and as far as possible at all other meetings of the stockholders shall be:

1. Roll call
2. Proof of due notice of meeting
3. Reading and disposal of any unapproved minutes
4. Reports of officers and committees
5. Election of Directors
6. Unfinished business
7. New business
8. Adjournment.

#### Article II—Directors

Sec. 1. The corporate powers, business and property of this corporation shall be exercised, conducted and controlled by a Board of Three Directors, unless said number shall be subsequently

changed to seven, who shall be stockholders of the Company. All vacancies in the Board of Directors shall be filled by the remaining membership of the Board for the unexpired term or terms. Directors shall receive no compensation for their services as Directors, but they shall be allowed their reasonable traveling expenses for attending meetings of the Board.

Sec. 2. The regular meetings of the Board of Directors shall be held at the office of the Company at Spokane, Spokane County, Washington, on the first Monday of each month, if not a legal holiday then on the next succeeding day, and may be held at any other time or place within or without the State of Washington, when so designated by a resolution adopted before the adjournment of any regular meeting or when all the Directors are present, or agree in writing to hold such meeting at any other time or place.

Sec. 3. Special meetings of the Board of Directors shall be held at the principal office of the Company, or may be held at any time and place within or without the state without notice and for the transaction of any business, by unanimous written consent of all the Directors, or by the presence of all the Directors at such meetings. Special meetings of the Board of Directors to be held at the principal office of the Company may be called at any time by the President or by any two members of the Board of Directors.

Sec. 4. Notice of special meetings of the Board of Directors shall be delivered personally by the Secretary to each member of the Board, or such notice may be mailed by the Secretary to each member, not later than one day before such special meeting, and such notice shall state the purposes thereof, and no other business shall be transacted at such special meeting unless by unanimous consent of all the Directors in writing. Notices of regular and adjourned meetings of the Directors shall not be required.

Sec. 5. A quorum at any meeting of the Board of Directors shall consist of a majority of the entire membership of the Board, and a majority of such quorum shall decide any question that may come before the meeting. In the absence of a majority of the Board of Directors, those present may adjourn the meeting from day to day.

Sec. 6. Officers of the Company shall be elected by the Board of Directors at their first meeting after the annual election of Directors for each year. If any office shall become vacant during the year, the Board of Directors shall fill the same for the unexpired term. The Board of Directors shall fix the compensation of all officers of the Company.

Sec. 7. The Board of Directors may at any time by a two-thirds vote of the full membership of the Board, for good causes shown, remove any officer or other employee of the Company.

Sec. 8. The order of business at the meetings of the Board of Directors shall be as follows:

1. Roll Call
2. Proof of due notice of meeting (when notice is required)
3. Reading and disposal of any unapproved minutes
4. Reports of officers and committees
5. Unfinished business
6. New business
7. Adjournment.

#### Article III—Officers

Sec. 1. The officers of the Company shall be a President, one or more Vice Presidents, who shall be elected from among the Directors, and a Secretary and Treasurer and an attorney who shall be elected from among the Directors or stockholders, all of whom shall be elected for one year, and shall hold office until their successors are elected and qualified, unless removed sooner from office as hereinbefore provided. The office of Secretary and Treasurer may be united in one person.

Sec. 2. The President shall preside at all meetings of the stockholders and directors; shall have general management and supervision of the affairs of the Company; he shall sign as President all certificates of stock, and all contracts and other instruments in writing, which have been first approved and authorized by the Board of Directors;



he shall call the Directors together whenever he deems it necessary, make reports to the Directors and stockholders, and perform such other duties as are incident to his office, or are properly required of him by the Board of Directors. His acts at all times and in all matters shall be under the direction of the Board of Directors. He shall receive such salary, if any, as the Board of Directors may from time to time fix and allow.

Sec. 3. In the absence of the President, or in case of his inability to perform his duties, the Vice President shall exercise all the functions of the office.

Sec. 4. It shall be the duty of the Secretary to keep full and accurate minutes of the proceedings of the Board of Directors and of the stockholders, in a proper book, and to issue all necessary notices for such meetings. He shall keep a book of blank certificates of stock, fill out and countersign all certificates issued, and make the corresponding entries on the margin of each book on such issuance. He shall make transfers of stock upon the books of the Company, upon surrender of the original certificate, and shall keep a proper transfer book and stock ledger in debit and credit form, showing the number of shares issued to and transferred by any stockholder, and the dates of such issuance and transfer. He shall keep proper account books of all transactions of the Company and discharge such other duties as pertain to his office,



or which are prescribed by the Board of Directors. He shall be entitled to charge and collect the sum of Fifty Cents (.50) for each certificate issued in making transfers of stock on the books of the Company, (except original issue), to be paid by the party having the transfer made, and shall receive such additional compensation for his services as the Board of Directors may from time to time fix and allow.

Sec. 5. The Treasurer shall have the custody of all moneys and securities of the Company, and shall keep regular books of account and balance the same each month. He shall deposit the same in the name of the Company in such bank or trust Company as the Directors shall from time to time designate, and shall pay out the same by check only in payment of bills or debts of the Company which have first been audited and directed to be paid by the Board of Directors. He shall make a report in detail of all moneys received, from whom, when, and for what purpose, to the Board of Directors at least quarterly, and make such other reports and statements as the Board of Directors may require. He shall take itemized, receipted vouchers for all money paid out, and file the same with the Secretary with his report. He may be required to give a surety bond in such sums as the Board of Directors shall fix, the premium thereto to be paid by the Company. He shall sign or countersign such instruments as require his signature,

and shall perform all duties incident to his office, or that are properly required of him by the Board of Directors. He shall receive such compensation for his services as the Board of Directors may from time to time fix and allow.

Sec. 6. The attorney shall be the legal advisor of the Directors and stockholders, shall have charge of any and all legal business in which the Company may be interested and shall receive such compensation from time to time as the Directors may fix and allow.

#### Article IV.

##### Stock, Stock Books and Stock Certificates

Sec. 1. Certificates of stock in such form as the Directors may prescribe shall be issued when fully paid up, in numerical order from the stock certificate books, signed by the President and Secretary, and sealed with the corporate seal. A record of each certificate issued shall be kept on the stub thereof.

Sec. 2. Shares of stock may be transferred at any time by the holders thereof, or by attorney legally constituted or by legal representative, upon the delivery of the original certificate properly endorsed or transferred but no transfer shall be valid except between the parties thereto until the same is entered in proper form on the books of the Company, and no such entry shall be made until the surrender of the certificate of stock. The surrendered certificate shall be cancelled before a new certificate shall be issued in lieu thereof, and the

cancelled certificate shall be retained by the Secretary. No transfer of stock shall be made upon the books of the Company until all indebtedness to the Company from the person in whose name the stock stands, whether for assessment, calls or otherwise, is paid.

Sec. 3. All stock of the Company remaining unissued, or that may be donated to or otherwise acquired by the Company, shall be treasury stock, and shall be held subject to disposal by the Board of Directors. Such stock shall neither vote nor participate in dividends while held in the treasury of the Company.

Sec. 4. The board of Directors may require a bond in such sum as it may deem reasonable to protect the Company from loss, before ordering the issuance of a duplicate certificate of stock claimed to have been lost or destroyed by any stockholders.

Sec. 5. The stock books of the Company shall be closed ten days previous to any regular or special meeting of the stockholders, and also ten days previous to the payment of any dividend, and the list of stockholders as appears upon the books of the Company at the time of closing said books shall determine who shall vote said stock at such meetings or receive dividends thereon.

#### Article V—Seal

Sec. 1. The corporate seal of the Company shall consist of the words "Mutual Gold Corporation,

Incorporated, Seal 1932'', and such seal as impressed on the margin hereof is hereby adopted as the corporate seal of the Company.

Sec. 2. The Secretary shall have the custody of the corporate seal and shall affix the same to all certificates of stock and other instruments of the Company requiring a seal when so directed by the Board of Directors.

#### Article VI.

The Directors of the Company may appoint an Advisory Committee of from three (3) to Fifteen (15) members, any member of whom may be called in at any time by the Directors to confer with the Board on any matter in which the Company may be interested. The advisory committee shall be chosen from among the stockholders of the Company, other than the Directors; each member of the Advisory Committee shall hold such office from the date of his appointment until the next annual meeting of the stockholders.

#### Article VII.

Sec. 1. These By-Laws may be amended, repealed or altered in whole or in part, or new By-laws may be adopted at the annual meeting of the stockholders, or at any special meeting of the stockholders called for that purpose, by a vote representing two-thirds of the outstanding stock, or by written consent of the holders of two-thirds of the out-

standing capital stock, given in the manner required by law.

Sec. 2. The Board of Directors may adopt additional By-Laws in harmony herewith, but shall not alter or repeal any by-laws adopted by the stockholders of the Company.

The foregoing By-Laws consisting of seven (7) articles were duly approved and adopted this 26th day of May, 1932.

RUSSELL F. COLLINS

President

BEN L. COLLINS

Secretary

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PLAINTIFFS' EXHIBIT 2

is set forth in the Complaint, as Exhibit 1 thereto, at page 23.

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PLAINTIFFS' EXHIBIT 3

is set forth in the Complaint, as Exhibit 2 thereto, at page 38.

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PLAINTIFFS' EXHIBIT 4

is set forth in the Complaint, as Exhibit 4 thereto, at page 45.

## PLAINTIFFS' EXHIBIT 5

MINUTES OF MEETING OF DIRECTORS  
OF MUTUAL GOLD CORPORATION

Held

July 18th, 1938

The Board of Directors of the Mutual Gold Corporation met at the office of the company at the Vance Hotel, Seattle, Washington, on Monday the 18th day of July, A. D., 1938 at the hour of 2:00 o'clock P. M. pursuant to adjournment and pursuant to notice sent to all the Directors and pursuant to call and waiver of notice duly signed by the members of the Board.

The meeting was called to order by President J. E. Stiegler, who presided, Vice President R. P. Woodworth acting as Secretary.

Roll call showed the following results:

Present—J. E. Stiegler, R. P. Woodworth, F. T. Hickcox, W. L. Grill, J. A. Vance, Russell F. Collins.

Absent—G. H. Ferbert.

Lloyd Vance and Robt. J. Cole were also present.

Call and Waiver of Notice was ordered spread upon the minutes and was as follows:

“WAIVER OF NOTICE  
of  
DIRECTORS' MEETING

We, the undersigned, being all the directors of the Mutual Gold Corporation, do hereby



call a meeting of the Board of Directors to be held at the Vance Hotel, Seattle, Washington, on Monday the 18th day of July, A. D., 1938 at the hour of 2:00 o'clock P. M.

We do hereby waive notice of the time, place and purpose of the said meeting, and do hereby consent that any and all business in any way pertaining to the affairs of the company may be transacted thereat.

R. P. WOODWORTH  
J. E. STIEGLER  
RUSSELL F. COLLINS  
W. L. GRILL  
F. T. HICKOCK  
J. A. VANCE''

The president stated that the meeting had been called for the purpose of providing some way for the financing of the corporation and the further development and operation of its property and stated that the proposition that had been made by the Board of Directors to the Sunshine Mining Company had been rejected.

After some considerable discussion in regard to the matter, Lloyd Vance made a verbal offer to provide a corporation to take over and manage the property of the Mutual Gold Corporation, and after some discussion, Mr. Vance was requested to submit the proposition to the Board in writing and the meeting was adjourned to reconvene at the

same place at 7:30 P.M. to enable Mr. Vance to prepare and submit a written offer as outlined.

The meeting reconvened at 7:30 P.M., Monday the 18th day of July, A. D., 1938 pursuant to adjournment. The same officers presided and roll call showed the same persons present as above set forth.

Mr. Lloyd Vance submitted a written proposition to the Board of Directors which was ordered spread upon the minutes and is as follows:

“Seattle, Washington  
July 18th, 1938

“To The Board of Directors of the Mutual  
Gold Corporation:

Gentlemen:

I herewith submit the following proposition with respect to your holdings and property situated in Mone County, California:

I and my associates will form a corporation under the laws of the State of Washington with a capital stock equal to the present outstanding capital stock of your corporation, the new corporation to have a par value of 25¢. Your corporation is to assign to me and the new corporation, an undivided one-half interest in your contract for purchase of said property and a good and sufficient mining deed to an undivided one-half interest in and to all of your other claims and holdings and turn

over to us the exclusive management and control of the property. We are to agree to install, as soon as weather conditions will permit, an amalgamation and cyanide plant capable of handling at least one hundred tons per day and will also install a hoist and other necessary mining equipment and buildings and furnish sufficient funds for working capital. We will also take care of the payments due and to become due on your purchase contract for the said claims and in return therefore we are to have all of the income from the said property until such time as all funds which we have advanced in the installation of machinery and equipment; payments on contract and for whatever purpose in connection with the operation of said property, after which time the net operating profits from the operation of said property shall be paid to you until your funded debt has been paid off and your preferred stock has received its preferred dividend at which time we are to own an undivided one-half interest in and to the property and assets of your corporation and in and to the assets of the new corporation. In other words, after the repayment to us of the funds which we have advanced, and the re-payment to you of your funded debt, and 25¢ per share on your preferred stock, each corporation shall be entitled to and shall receive one-half of the net operating profits.

If this proposition meets with your approval, a detailed contract is to be worked out, you are to forthwith call a meeting of your stockholders and have them ratify the same and extend to the stockholders of your corporation the right to purchase stock in the new corporation on the same proportionate basis as they now hold stock in the Mutual Gold Corporation. To take care of the present indebtedness for loans to your corporation, you will increase your capital stock so that this \$24,000 of indebtedness, (or whatever the amount may be), will be taken care of on a stock bonus and note basis, the same as was provided when you raised your last \$30,000, or if you prefer, we will take care of these loans to your corporation, in which event the new corporation shall receive 60% interest in the property and you will receive 40% interest upon the completion of the terms herewith outlined, or in other words the profits at that shall be divided 60% to the new corporation and 40% to your corporation.

We will, of course, agree to take care of the assessment work which may be necessary to protect your claims as required by law, or in the event that we should decide we do not wish to hold any of the said claims, we will notify you in sufficient time so that you can do the assessment work thereon on the present machinery and equipment which you now have.

We, of course, will be allowed to sell or dispose of in such manner as we see fit and will make proper accounting to your corporation therefor. However, we shall have the right to use and have the exclusive management and control of all of the property of your corporation.

This offer is made contingent upon our examination of the titles and claims now held under lease and option for which we are to have a period of fifteen days from the date hereof to examine and if not satisfactory this offer may be withdrawn.

Respectfully submitted,"

Objections were raised as to the proposition submitted as follows:

1. That the current obligations and capital stock tax of the Mutual Gold Corporation should be taken care of by the new company.

2. That the new company should take over the recent loans of Mr. J. A. Vance and Mr. J. E. Stiegler to the Mutual Gold Corporation, and that the same should be a part of the new corporation with right to such new corporation to reimburse itself for expenditures in this respect the same as any other expenditures.

3. That after the new company had been repaid from the net operating profits all funds which it had advanced for Mutual Gold Corporation, loans assumed, expenses incurred, etc., that the net oper-

ating profits would then be paid over to the Mutual Gold Corporation until such time as its funded debt had been paid off and its Class A stock had received dividends of 25¢ per share from and after which time the net operating profit would be divided on a 50-50 basis.

4. That Lloyd Vance should guarantee a subscription to the new corporation, exclusive of the loans assumed by it, in the amount of \$70,000.

After some considerable discussion Mr. Lloyd Vance agreed to accept the changes recommended in the said offer and the Secretary was instructed to let the minutes so show.

Thereupon, on motion made by Mr. Grill, seconded by Mr. Hickey and unanimously carried, the following resolution was adopted:

Resolved that the offer of Lloyd Vance as submitted to this meeting, (copy of which is spread upon the minutes) when changed and altered in conformity with the changes hereinbefore set out in these minutes, be and the same is hereby received, approved and recommended to the stockholders for acceptance; that the annual meeting of the stockholders be called and held as soon as possible and not later than the 6th day of August, A. D. 1938 at the hour of 11:00 o'clock A.M. for the purpose of electing a Board of Directors and approving and acting upon the offer of the said Lloyd Vance for the sale and disposition of the undivided one-half interest in and to the holdings of the company, and author-



izing and empowering the Board of Directors to sell or otherwise dispose of the whole or any part of the assets of the corporation at such time or times and on such terms and conditions as they may deem adequate, and to form and enter into any working agreement along the lines as contemplated by the offer of said Lloyd Vance, or such other or different agreement as they may, in their absolute discretion deem advisable, and to transact any and all other business that may come before said meeting, and that the Secretary be and she is hereby authorized, empowered and instructed to set the date of such meeting at the earliest moment possible as provided by law and the by-laws of this corporation, and that a letter be sent with the notice of such meeting to all the stockholders advising them fully with respect to the necessity of some such action and covering the activities of the company since the last report to *them* made under date of April 5, 1938, such letter to be approved and signed by Mr. J. E. Stiegler as President; and that Wednesday, the 20th day of July A. D., 1938 at 12:00 o'clock noon be and the same is hereby fixed as a recorded date for the determination of the shareholders entitled to notice of such meeting.

On motion duly made, seconded and carried the Treasurer was instructed to pay to Russell F. Collins the sum of \$100.00 as soon as funds were available.

On motion duly made, seconded and carried, the Secretary was instructed to ask for 60 days exten-



PLAINTIFFS' EXHIBIT 6  
NOTICE OF ANNUAL MEETING OF  
STOCKHOLDERS  
of  
MUTUAL GOLD CORPORATION

Date of Meeting—August 6, 1938

Notice is hereby given that the Annual Meeting of Stockholders of the Mutual Gold Corporation will be held at the office of the Company, 401 Fernwell Building, in the City of Spokane, Washington, on Saturday, the 6th day of August, A. D. 1938, at the hour of 11:00 o'clock A. M., for the following purposes:

1. To elect a Board of Directors for the ensuing year.
2. To approve, ratify and confirm the acts and proceedings of the Board of Directors and Officers of the corporation since the last Annual Meeting of Stockholders.
3. To authorize, empower and direct the Board of Directors to accept the offer of Lloyd Vance as outlined in the letter of the President under date of July 20th, 1938, a copy of which letter is herewith enclosed, and by reference made a part hereof, and/or authorize, empower and direct the Board of Directors to make and enter into such other or different deal with Lloyd Vance, or any other person or corporation, with respect to all of the assets of this corporation, the management, control and oper-

ation thereof, the division of the profits thereof or otherwise, as such Board of Directors shall, in their absolute discretion, deem expedient, advisable or desirable.

4. To authorize and empower the Board of Directors to sell, lease, exchange or otherwise dispose of all of the assets of this corporation at such time or times, for such price and upon such terms and conditions, for cash or otherwise, as they shall, in their absolute discretion deem expedient, advisable or desirable, including the exchanging for shares in another corporation, domestic or foreign.

5. To take action upon and transact any other business which may properly and lawfully come before the meeting.

The Minute Book of the corporation will be presented to the meeting and will be open for the inspection of stockholders.

The enclosed form of proxy is solicited by the management and it is the intention of the proxies named therein to vote for the election of the Directors of the corporation for the ensuing year, and in favor of approving, ratifying and confirming the acts and proceedings of the Board of Directors and the Officers of the corporation since the last Annual Meeting of Stockholders of the corporation (held February 3, 1937) and as outlined above.

If you do not expect to be personally present at

the meeting the Board of Directors request that you sign and return the enclosed proxy at once.

Dated July 20, 1938.

MUTUAL GOLD CORPORATION  
By E. FUSON, Secretary.

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PLAINTIFFS' EXHIBIT 8  
MUTUAL GOLD CORPORATION  
401 Fernwell Building  
Spokane, Wash.

Directors

J. A. Vance, Seattle, Wash.  
Russell F. Collins, Leevining, Cal.  
R. P. Woodworth, Spokane, Wash.  
J. E. Stiegler, Naches, Wash.  
W. L. Grill, Seattle, Wash.  
F. T. Hickcox, Tacoma, Wash.  
G. H. Ferbert, Naches, Wash.

Officers

J. E. Stiegler, President  
R. P. Woodworth, Vice-President  
J. A. Vance, Vice-President  
Russell F. Collins, Vice-President  
E. Fuson, Secy.-Treas.

July 20, 1938

Dear Stockholders:

By direction of the Board of Directors there is enclosed herewith notice of meeting of the stock-

holders of your Company to be held at the office of the Company at 401 Fernwell Building, in the City of Spokane, Washington, on Saturday, the 6th day of August, 1938, at the hour of 11:00 o'clock A. M.

If you will not be personally present at the said meeting, kindly sign and return, at once, the proxy which is enclosed herewith, that all stock may be represented at this meeting—this is imperative.

Since the reports mailed to you under date of April 5th, 1938, your officers and directors have been actively engaged in endeavoring to provide ways and means for the further financing and operation of your property. Mr. J. A. Vance, Vice-President and General Manager, recently spent about two weeks at the property with Mr. Robert J. Code, Mining Engineer, who, under date of June 14, 1938, made a very comprehensive report of his findings, with recommendations. Tests have also been made with respect to the proper treatment of this ore to effect a better saving than was possible with our present equipment.

The result of these reports seems to be that we have at least 125,000 tons of ore available that averages about \$11.20 per ton. That savings by amalgamation, as shown by laboratory test, is about 50% while by actual operation we recovered about 64%. That approximately 98½% may be recoverable by amalgamation and cyanidation.



While use of our present equipment was advisable during the development period for the purpose of determining the character and continuity of the ore, proper method of treatment, and to assist in providing funds to carry on the work, the condition of the property is now such that further operation with the present equipment should not be continued. A new amalgamation and cyanidation plant capable of handling at least 40,000 tons per year should be installed, electrical power line put in, new hoist equipment, mining machinery and additional accommodation for larger crew provided.

With this idea in view we have been contacting some of the larger well-known operating companies with a view of interesting them in taking over and operating your property under similar terms and conditions as the Azurite, Jack Waite and others have been handled. While we have not been successful in this respect our lack of success, we believe, was due to the present low market on base metals and the unsettled business conditions in general and not to any lack of merit or interest in your property.

Time also is short, as it is necessary, if any additional equipment is to be installed this year, that it be installed at once. Another \$10,000.00 payment is due this fall on the contract of purchase and a crew must be kept continuously employed at the property to keep the tunnels in working condition, which would require about \$20,000 to be spent for

these items—funds for which would have to be raised outside.

The best offer which we have thus far received and which will be submitted to you, as stockholders, for your approval, was received from Lloyd Vance on the 18th instance, the substance of which, as agreed to, is as follows:

That Mr. Lloyd Vance, and his associates, will at once form a corporation under the laws of the State of Washington with a capital at least equal to the present outstanding capital of the Mutual Gold Corporation; the stock of the new corporation having a par value of 25 cents per share. That the stockholders of the Mutual Gold Corporation will be given an opportunity to purchase an interest in the new corporation equal to what their present holdings are in the Mutual Gold Corporation, that is, holders of 5 per cent par common stock, will be given an opportunity to purchase one 25 cent par share in the new corporation for each 5 shares of common they now hold and the present Class A 25 cent par stockholders, will be offered an opportunity to purchase one 25 cent par share in the new corporation for each Class A share they now hold.

Mr. Lloyd Vance and associates will underwrite \$70,000.00 at least of stock in the new corporation as a guarantee that that amount will be immediately available for the carrying out of the terms of the contract.

The new corporation will agree to forthwith install an amalgamation and cyanidation plant capable of handling at least 100 tons per day, new hoist, power line, adequate mining equipment and tools, erect such additional buildings as may be necessary, take care of payments on the option and lease for the purchase of the property, provide funds for taking care of the current liabilities of the Mutual Gold Corporation and the present capital stock tax of the Mutual Gold Corporation, and will also take into the new corporation the \$21,000.00 in debts consisting of loans made to the Mutual Gold Corporation over and above its last \$30,000.00 funded debt.

The new corporation is to have the exclusive management and control of all of the property of the Mutual Gold Corporation and all of the net operating profits shall go to the new corporation until such time as any and all funds expended by it in the operation of the property, installing machinery, payment of loans, and any and all funds expended by it for whatever purpose shall have been paid, after which time all of the net operating profits shall go to the Mutual Gold Corporation until such time as its funded debt shall have been paid off and its Class A stock shall have received 25 cents per share, at and from which time the net operating profits shall be divided 50-50 between the Mutual Gold Corporation and the new corporation.

This, in substance, covers the principal points contained in the offer of Lloyd Vance, the details

of the contract of course, it will be necessary for your Board of Directors to work out.

You will be asked to approve the offer and authorize the Board to execute such contract as they shall deem advisable, and will also be requested to authorize them to sell or otherwise dispose of the whole or any part of the assets of the Mutual Gold Corporation at such time or times, and on such term or terms and conditions as they shall, in their absolute discretion, deem adequate so that they may be placed in a position to dispose of the whole or any part of the property, and have full authority to do so should they find it necessary or advisable.

Very truly yours,

J. E. STIEGLER,  
President.

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PLAINTIFFS' EXHIBIT 9  
MINUTES OF ANNUAL MEETING OF  
STOCKHOLDERS  
of  
MUTUAL GOLD CORPORATION

Held August 6, 1938

The stockholders of the Mutual Gold Corporation met in regular annual session at the office of the company, 401 Fernwell Building in the City of Spokane, State of Washington, on Saturday the 6th day of August A. D., 1938 at the hour of 11:00 o'clock A.M., pursuant to call and notice.

The meeting was called to order by President J. E. Stiegler who asked R. P. Woodworth to preside, Secretary E. Fuson acting as recording officer.

The Chair appointed Mr. E. D. Weller and Mrs. E. Fuson as proxy committee to check and report on the proxies.

The office of the company being inadequate to accomodate the stockholders, the meeting, on motion duly made, seconded and carried was adjourned to be reconvened at the office of the Company in the Assembly Room of the Old National Bank Building, Spokane, Washington at the hour of 2:00 o'clock P.M.

The meeting reconvened at 2:00 o'clock P.M. at the office of the Company in the Assembly Room of the Old National Bank Building, Spokane, Washington pursuant to adjournment, the same officers being in the chair.

Roll call showed the following results:

Present in Person.....	856,404
Present by Proxy.....	1,105,953
Present by Endorsed Certificates..	22,250
Total shares present and entitled to vote .....	1,984,609
Total shares outstanding.....	2,633,830
Shares necessary for a majority.....	1,316,916
Shares necessary for a $\frac{2}{3}$ majority.....	1,755,890

The proxy committee reported that the proxies were in regular form in the amounts as above



stated, and upon motion duly made, seconded and carried, the report of the proxy committee was accepted and approved.

The Secretary presented a copy of the Notice of the Annual Meeting pursuant to which the meeting was held, and a copy of the letter of J. E. Stiegler, President referred to and made a part of said notice together with the affidavit of mailing to each and all stockholders of record more than 10 days prior to the date fixed for the meeting as provided by the by-laws of the company. The same being in regular form and there being no objections thereto, the Chair declared the meeting was regularly and duly called and open for business.

The minutes of the last meeting of the stockholders held February 3, 1937 were read and on motion duly made, seconded and carried, approved as read.

The reports of the officers and directors having been mailed to the stockholders together with a copy of the balance sheet, and there being no objection thereto, on motion duly made, seconded and carried, same were ordered accepted and approved.

The next order of business was the election of a Board of seven directors to serve until the next annual meeting of the stockholders and until the election and qualification of their successors.

The following were duly nominated:

J. E. Stiegler	F. T. Hickcox
W. L. Grill	R. F. Collins
J. A. Vance	G. H. Ferbert
R. P. Woodworth	



There being no further nominations, same on motion duly made, seconded and carried were declared closed. There being no contest for any of the offices of directors, on motion duly made, seconded and carried, the Secretary was instructed to cast the unanimous ballot of all shares present and entitled to vote for the said directors so nominated, and the Secretary thereupon cast 1,984,609 votes for the said directors and the Chair thereupon declared that J. E. Stiegler, W. L. Grill, J. A. Vance, F. T. Hickcox, R. F. Collins, G. H. Ferbert, and R. P. Woodworth were duly elected and so declared them to be, to serve until the next annual meeting of the stockholders and the election and qualification of their successors.

The chair then read the notice of the new business to be taken up at the meeting as contained in the notice of the meeting which was to authorize the Board of Directors to enter into some form of agreement with someone along the lines as contained in the offer which had been submitted to them by Lloyd J. Vance, to form a corporation to take over and manage the property, or to authorize the Board to enter into such other or different deal with Lloyd J. Vance or any other person or persons as they might see fit, and further to authorize the Board of Directors to sell or otherwise dispose of the property at such time or times and on such terms and conditions as they might see fit. Mr. Lloyd J. Vance then handed the Chair the following letter addressed

to the Board of Directors which was read to the stockholders:

“Seattle, Washington  
August 6th, 1938  
2:30 P.M.

Board of Directors  
Mutual Gold Corporation  
401 Fernwell Building,  
Spokane, Wn.

Gentlemen:

Reference is hereby made to my offer submitted to you at the meeting of your Board held at the Vance Hotel, Seattle, Washington, on Monday, the 18th day of July A. D., 1938.

In view of the fact that this offer, as submitted by me, has not yet been accepted by you, and that the changes made in same at your meeting altered the written proposal as submitted, so that the terms thereof are somewhat different and in view of the fact that I was unable to secure an abstract on the Mutual Gold properties as there was no abstract office in Mono County, said offer is hereby withdrawn. Furthermore, it is my understanding that two of the directors have another proposition which they favor.

LLOYD J. VANCE”

Mr. Russell F. Collins then asked Mr. Ferbert to present his proposition. Mr. Ferbert then read a

telegram from Mr. Keily addressed to Russell F. Collins which stated in substance (said telegram not being filed with the Secretary) that Mr. Keily was unable to answer the questions which had been asked in a telegram to him by Mr. Collins, and that he could not make any definite commitments as to what anyone would do, but he felt sure that Mr. Garbutt would enter into a contract satisfactory to the Board.

Mr. Ferbert then ask Mr. Collins to explain the matter further advising the stockholders as to what the contents of his telegram to Mr. Keily had been. Mr. Collins advised that he had wired Mr. Keily to advise him as to whether or not Mr. Garbutt was willing to go ahead with the same kind of a deal that had been submitted by Mr. Vance and whether or not he would let the stockholders of the corporation set in in the same manner which Mr. Vance had offered to do.

He then went ahead to explain that after Mr. Vance's offer had been received by the Board, Mr. Garbutt had been contacted to see whether or not he would make a deal the same as Mr. Lloyd Vance had offered, and that Mr. Garbutt stated that he would take Mr. Vance's vehicle and pledge \$86,000.00 of his own money if the deal were turned over to him, and that he would guarantee that there would be no forfeiture of the contract or any trouble in that respect if he had the deal. Mr. Col-

lins then explained that Mr. Garbutt was a man of his word and that he would personally guarantee that anything Mr. Garbutt had said he would stand back of, and that Mr. Garbutt was the agent for the owners and that Mr. Keily, who had sent the telegram, was the mining superintendent who had been on the property for the company and as agent for the owners, and that if a deal was entered into with Mr. Garbutt, naturally there would be no trouble with regard to the contract of purchase.

The Chair then asked Mr. E. D. Weller to preside, and after attaining the floor, explained that the so called offer which Mr. Ferbert and Mr. Collins were attempting to make was mere hearsay and not a concrete proposition. He then read to the stockholders the offer which had been submitted by Mr. Lloyd J. Vance and requested that same be spread upon the minutes, and a copy thereof is hereto attached and made a part hereof.

Mr. Woodworth then went on to explain that the offer which he had just read was a concrete proposition, that no other definite offer had yet been received, that the telegram was vague, not signed by Mr. Garbutt and mere hearsay, and was an attempt to seal the offer which had been made by Mr. Lloyd Vance, which was not fair in that Mr. Vance, Sr. had saved the property for the company at two different times by the expenditure of his own money, and that it did not seem right to him to let an outsider take the same deal as presented

by Mr. Lloyd Vance, and he presented the following resolution and moved its adoption:

“Resolved, that the offer of Mr. Lloyd J. Vance, as outlined in the letter of the President of this corporation to the stockholders thereof, as more fully outlined at this meeting and set forth in the minutes thereof, be and the same is hereby approved, and that the Board of Directors of this corporation be, and they are hereby authorized, empowered and directed to accept said offer and to take any and all steps necessary or deemed necessary, and/or to enter into such other or different deal or agreement with Lloyd J. Vance or any other person or corporation with respect to the management, control and operation of all the assets of this corporation, the division of profits thereof or otherwise as the Board of Directors of this corporation shall, in their absolute discretion deem expedient, advisable or desirable.”

Some discussion was had thereon without a second, whereupon Mr. Woodworth withdrew the resolution and offered the following resolution and moved its adoption:

“Resolved, that the Board of Directors of this corporation be and they are hereby authorized, empowered and directed to sell, lease, exchange or otherwise dispose of, to any person, persons or corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in



another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection, which in their judgment they may deem necessary or advisable." Which motion was seconded by Mr. Bateham.

Mr. Grill then offered the following resolution and moved its adoption:

"Resolved, that the Board of Directors of this corporation be and they are hereby authorized, empowered and directed to sell, lease, deal with, operate, exchange or otherwise dispose of, to any person, persons or corporation desiring to purchase, lease, deal with, exchange, operate same, any part of or all of the assets of this corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection, which in their judgment they may deem necessary or advisable."

The resolution was duly seconded, ballot taken and 1,984,609 shares voted in favor thereof. The chair then declared same duly carried.

Mr. Woodworth then resumed the chair and called upon Mr. Cole, Mining Engineer who had recently examined the property, to address the stockholders. Mr. Cole thereupon explained to the stockholders



the result of his examination and findings and went into some detail in regard thereto.

No further business appearing, the meeting on motion duly made, seconded and carried was adjourned.

J. E. STIEGLER

Chairman

E. FUSON

Secretary

Seattle Washington

August 5th, 1938.

Board of Directors,  
Mutual Gold Corporation,  
401 Fernwell Building,  
Spokane, Washington.

Gentlemen:

Reference is hereby made to my offer submitted to you at the meeting of your Board held at the Vance Hotel, Seattle, Washington, on Monday, the 18th day of July, A. D. 1938.

In view of the fact that this offer, as submitted by me, has not as yet been accepted by you, and that the changes made in same at your meeting altered the written proposal as submitted, so that the terms thereof are somewhat confusing, I am exercising the right specifically reserving therein and said offer is hereby withdrawn, and in lieu thereof I herewith submit the following proposition

with respect to your holdings and property situate in Mono County, California.

I will forthwith upon your acceptance of this offer and my proposition as herein contained, organize a corporation under the laws of the State of Washington, having a capital stock of \$162,500.00, divided into 650,000 shares of common stock of the par value of 25 cents each. Such corporation shall be known as the Mono Lake Mining Company, or by such other name as I may decide upon. Such corporation so formed by me is to take over all of the mining property and equipment of your corporation and to operate the same under the proposed terms and agreement as set forth in the memorandum of agreement hereto attached and made a part hereof, and your acceptance of this offer will be an agreement by you to execute such agreement, forthwith upon the completion of the organization of such corporation.

It is understood that no personal liability of any kind, character or description shall rest upon me other than as to the forming of such corporation as herein contemplated and that any and all liability with respect to the carrying out of the terms of said contract shall be upon the corporation so formed, and not upon me.

Respectfully submitted,

LLOYD J. VANCE

Vance Lumber Company  
Joseph Vance Building,  
Seattle, Washington.

AGREEMENT

This Agreement made and entered into this ..... day of August, 1938, by and between the Mutual Gold Corporation, a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal place of business at Spokane, Washington, and authorized to do business within the State of California, party of the first part, hereinafter called "Owner", and .....  
....., a corporation organized and existing under and by virtue of the laws of the State of Washington, party of the second part, hereinafter called "Operating Company",

Witnesseth:

That whereas the party of the first part is now the owner and holder of that certain lease and agreement dated July 13, 1932, made and executed by the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, as Sellers, and Russell F. Collins and Ben Collins, as Buyers, for the sale and purchase of the following described mining claims situate in Mono County, California, in what has been known at various times as Mono Lake Mining District, Bridgeport Mining District, and Homer Mining District, to-wit: Log Cabin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Mill Site, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tamarack, Oro

and Burke Fraction; the Log Cabin No. 2, Log Cabin No. 6 and Log Cabin No. 7 being patented and the others unpatented lode mining claims; a copy of which agreement, marked "Exhibit A" is hereto attached and made a part hereof as fully and to all intents and purposes as tho set forth in full herein, and hereinafter referred to with all amendments and changes therein as "Purchase Contract", and

Whereas on or about the 13th day of July, A.D. 1932, supplemental agreement affecting the said contract was made and entered into by and between the said Chandis Securities Company, M. N. Clark and Alice Clark Ryan, and the Mutual Gold Corporation, a copy of which agreement marked "Exhibit B" is hereto attached and made a part hereof as fully and to all intents and purposes as tho set forth in full herein, and

Whereas other agreements changing and altering the said original agreement have been made and entered into, all of which agreements are familiar to the Operating Company, and all of which agreements are hereby referred to and made a part hereof as fully and to all intents and purposes as tho set forth in full herein, and

Whereas there is a balance due and unpaid on the said Purchase Contract in the amount of One Hundred and Thirty Thousand (\$130,000.00) Dollars, and

Whereas the party of the first part is the owner

of the following unpatented lode mining claims situate in Homer Mining District, in the County of Mono, State of California, described as follows, to-wit: Timber Slope, Contact, Contact No. 1, Mutual Gold Lode, Mutual Gold Lode No. 1, Dome, Dome No. 1, and recorded in Volume 1, pages 223, 224 and 225, Mono County Records, title thereto being acquired by deed dated November 15, 1932, executed by John Simpson, Mary Stevens and Russell F. Collins and filed December 21, 1932, and recorded in Volume 7 of Official Records, page 201, records of Mono County, California (seven claims) and also

Lakeview, Lakeview No. 1, Lakeview No. 2, Lakeview No. 3, Gunsight, Gunsight No. 1, Gunsight No. 2 and Gunsight No. 3, title thereto being acquired by deed dated November 15, 1932, executed by John Simpson, Mary Stevens, Walter Stewart and Russell F. Collins and recorded in Volume 8 of Official Records, page 306, Records of Mono County, California (eight claims), and also

Summit Extension, Summit Extension No. 1, Summit Extension No. 2, Summit Extension No. 3, Summit Extension No. 4 and Summit Extension No. 5, title thereto being acquired on November 15, 1932, by deed executed by John Simpson, Mary Stevens, Walter Stewart and Russell F. Collins, said deed being recorded in Volume 8 of Official Records, page 305, Records of Mono County, California, (six claims). (Said fourteen claims last



described being also conveyed to owner by deed from same parties filed for record December 21, 1932, and recorded in Volume 7, Official Records, page 202, Mono County California) and

Whereas the Owner has certain milling equipment, mining equipment and machinery and tools situate upon the above described property, which milling equipment and machinery is inadequate and not practical for the further continued use and operation of its property, and

Whereas the owner has certain supplies situate upon the said property in the approximate amount of One Thousand (\$1,000.00) Dollars, and

Whereas the owner has certain indebtedness due on open accounts, production certificates, production notes and current bills and does not have sufficient funds to carry on and continue its mining operation, and

Whereas the Owner desires to enlist for the purpose of further developing, equipping and operating the said mining property, the financial resources and mining skill of the Operating Company, and

Whereas the Operating Company is willing to utilize its resources and skill in connection with the said mining property;

Now, therefore, in consideration of the premises and the mutual benefits to be derived therefrom, the sum of Ten (\$10.00) Dollars by each party to the other in hand paid, the receipt and sufficiency of



which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The period of this agreement shall be perpetual, subject to the termination thereof by the expiration of the Charter of the Owner, and subject further to the termination thereof as hereinafter provided.

2. The Operating Company agrees to furnish a minimum of Seventy Thousand (\$70,000.00) Dollars to be expended by it insofar as may be necessary in the construction of an amalgamation and cyanide plant on the property with a rated capacity of one hundred tons per twenty-four hours, installation of a hoist, power line, necessary mining equipment and buildings, and provide supplies and working capital to operate the mine.

3. The Operating Company agrees to assume the outstanding open accounts of the Owner in the amount of Twenty-one Thousand Five Hundred Seventy Eight Dollars and Fifty Cents (\$21,578.50) by exchanging stock in the Operating Company at par with the creditors owning said accounts, but the Operating Company does not otherwise assume said accounts or obligate itself to pay the same.

4. The capital stock of the Operating Company shall be One Hundred Sixty-two Thousand Five Hundred (\$162,500.00) Dollars and the number of shares into which it shall be divided is 650,000 common shares of the part value of twenty-five cents each. The present stockholders of the Owner shall

have the right to subscribe, within fifteen days from the date of this contract, to the stock of the Operating Company, in the ratio of one share in the Operating Company for each five shares of common stock held in the Owner, and one share of the stock of the Operating Company for each five shares of preferred stock held in the Owner. After the expiration of said fifteen day period the present stockholders shall have no further right to make any subscription thereto and the Operating Company shall have the right to sell or otherwise dispose of any and all of its stock not so subscribed at such time, or times, and on such terms and conditions, for cash or otherwise, as it shall see fit, provided, however, that none of said stock shall be disposed of at less than twenty-five cents per share.

5. The Operating Company agrees to advance the amount necessary to pay the installment of Ten Thousand (\$10,000.00) Dollars, which by the contract of purchase, the Owner is obliged to pay on November 1, 1938, and to assume any and all liability of the Owner under the said "Purchase Contract" according to the terms and conditions thereof as contained in the said contract and any and all modifications or changes thereto, and to comply with all of the terms and conditions thereof, and to keep the same in good standing at all times.

6. The Operating Company agrees to advance the necessary funds to take care of the capital

stock tax of the Owner due and payable in the year 1938 and any and all current bills of the Owner now due.

7. The Operating Company further agrees to perform the assessment work required by law as to any of the unpatented mining claims hereinabove described, so as to fully protect the Owner at all times in that respect, provided, however, that the Operating Company may at any time relinquish its rights in and to any of the said unpatented mining claims which it does not deem advisable to develop further or longer hold, and may be relieved from all liability in regard thereto by executing a conveyance of its interest in the said mining claims to the Owner, and delivering same in sufficient time for it to perform any assessment work necessary to protect the said claims.

8. The Operating Company shall have, and is hereby given, the right to apply for and secure patent, in the name of the Owner, to any of the said above described mining claims and have the same surveyed; that any and all charges and expenses so paid by the Operating Company shall be repaid to it as a part of its operating expenses as herein provided.

9. The Owner covenants and agrees to assign, transfer and set over to the Operating Company, and by these presents does hereby assign, transfer and set over unto the Operating Company an undivided one-half interest in and to the contract

of purchase hereinbefore referred to, marked "Exhibit A" and hereto attached and made a part hereof, subject to the terms and conditions hereof, and does hereby agree to forthwith turn over the exclusive possession of all of said property and the exclusive management and control thereof unto the Operating Company, to be operated by it permanently except as herein otherwise provided, and the said Owner does hereby further agree as, if and when title shall be executed to it by or under the terms of the said "Purchase Contract" to forthwith execute to the Operating Company a good and sufficient deed transferring and setting over to the said Operating Company an undivided one-half interest in and to said mining claims; said Owner does further agree at such time to execute a good and sufficient deed to the other mining claims hereinabove described conveying, transferring and setting over to the said Operating Company an undivided one-half interest in and to the said mining claims, and to execute any and all instruments of transfer necessary, or deemed necessary, in order to convey, set over and transfer to the Operating Company an undivided one-half interest in and to the said mining claims and each and all of them, to the end that each of the parties hereto shall at such time own an undivided one-half interest in and to the said property.

10. The Operating Company shall promptly begin and prosecute vigorously the installation of the

new milling plant with related appurtenances and start operating subject to such delays as may be occasioned by *force majeure*.

11. The Operating Company shall mine and mill and operate the property in accord with good mining practice and in such manner as, in the opinion of the Operating Company, will be in the best interests of all concerned and upon such tonnage scale as the ores available in said properties, in the opinion of the Operating Company, justify, and in accord with good mining practice, and subject further to such production limitations as may be imposed by any authorized governmental agency, provided, however, that such operation shall at all times be in accord with and as provided and set forth in the said "Purchase Contract" and any and all amendments thereto.

12. The net profits shall be determined, by deducting the total expenses of whatsoever nature in connection with the operation of the properties including all costs of management, administration and operation, from the net proceeds from crude ores and/or concentrates or mint returns or other products from the property, and same shall be divided as follows:

(a) The payments on the contract of purchase shall be met first as they become due and payable.

(b) After sufficient working capital has been accumulated the net profits shall thereafter be



credited against the expenditures made by the Operating Company under the terms hereof or in connection herewith until such time as any and all of said expenditures and advances shall have been repaid to the said Operating Company.

(c) Thereafter the net profit shall be distributed, first, to the payment of the production certificates and production notes of the Owner now outstanding and amounting to Thirty One Thousand Eight Hundred and Seven (\$31,807.00) Dollars, and second, to the retirement of its preferred stock then outstanding.

(d) After the retirement of the above obligations in the order as enumerated, the net profit shall be distributed fifty percent to the Owner and fifty percent to the Operating Company. The net profits shall be distributed semi-annually, quarterly or monthly, at the option of the Operating Company.

13. At all reasonable times an accredited representative of the Owner shall have full and free access to the said properties, to the plants handling the ores and to the metallurgical and financial records pertaining thereto so as to be currently informed and assured as to the correctness of the accounts which the Operating Company shall render, as soon as conveniently possible after the termination of each six months period (or quarterly if the Operating Company so desires) and the Owner shall have thirty days from the date of mail-



ing said accounts within which to examine the same and object thereto in writing, if any error is found therein, it being understood and agreed that failing such objection within said period the accounts shall be considered correct.

14. The Operating Company shall keep true and accurate books of account, assay records and maps of any and all work and furnish to the Owner, by mailing to him at the close of each day's business, a copy of all daily reports showing the number of tons mined, number of tons milled, assay value of the heads and the assay value of the tails, and shall also furnish a copy of all monthly reports, by the superintendent or management, of development and operations and maps explanatory thereof, showing the operations thereof for each month, by mailing the same monthly to the Owner and shall also furnish the Owner, promptly upon the receipt of same, with a duplicate copy of all mint, smelter or other returns covering any and all shipments of ore or products shipped or sold from the property, and will, at the request of the Owner, notify the Owner as to any and all cleanup dates so that the Owner may have a representative present at such time, should it so desire.

15. No officers' salaries of the Operating Company shall be paid or accrue until such time as the operations of the property amount to One Hundred Fifty Thousand (\$150,000.00) Dollars in net income. Thereafter the management fees of the Operating

Company shall be reasonable and such as are usually charged in similar active operations.

16. Except as otherwise provided in the Purchase Contract and the modifications thereof, the Operating Company shall not be required to mine, mill or otherwise operate the said properties during such time as it shall be prevented from so doing by causes beyond its control, including labor troubles or when the low grade of the ores or low metal prices shall render operations hereunder unprofitable, and during any such period or periods the Operating Company shall be excused from such performance excepting only the obligation to take care of said property as though it were the complete owner thereof and to maintain the same; Provided, however, that upon the removal of the cause of disability or of unprofitable conditions the Operating Company shall promptly resume and continue operations.

17. In the event that the operation of the said property at any time becomes unprofitable, whether by reason of ores of low grade or otherwise, development and other expenditures made by the Operating Company in an endeavor to restore the said property to a profitable operation shall be considered as expenditures by the Operating Company to which it is entitled to reimbursement as herein provided.

18. After the expenditure of Seventy Thousand (\$70,000.00) Dollars herein by the Operating Company, it expressly reserves, and shall have, the right

to terminate this Agreement at any time during the period upon giving sixty days previous notice in writing to the Owner of its intention so to do, and upon the termination thereof the Operating Company shall have no further liability hereunder other than the distribution of any profits due the Owner up to the date of such termination, and the Owner shall be entitled to take possession of the said property and the Operating Company does hereby agree, upon the happening of such event, to reconvey and turn over to the Owner, the title and possession of the said property together with all right, title and interest of the Operating Company in and to all supplies, tools, machinery, implements, equipment and buildings placed thereon, and the Owner shall be entitled to the exclusive management and control thereof and to operate the same.

19. Any and all daily and monthly reports to be furnished to the Owner herein, shall be sufficiently given if sent to the Owner at its address herein given, and any other notice provided for herein shall be sufficiently given if sent by registered mail addressed to the party entitled to receive the same as follows:

To: Mutual Gold Corporation,  
401 Fernwell Building,  
Spokane, Washington.

To: .....  
1418 Joseph Vance Building,  
Seattle, Washington,

except as either party hereto shall hereafter instruct the other party by written notice to be appended to this agreement.

20. The Owner agrees to assume and pay any and all damages, if any, caused or arising out of the negligent operation of its property, if any, that may have resulted or result in the pollution of the waters of any stream or to the damage or injury of anyone entitled to the use of the waters of such stream, and that in the event of its failure so to do, that the Operating Company shall have, and is hereby given, the right to make any such settlement, compromise or defence of any and all such claims, demands and actions therefor upon such terms and conditions as it shall see fit and to reimburse itself for any and all sums so expended from the first funds available and that any and all damages so resulting from future operation of the property by the Operating Company shall be construed to be as an operating expense and shall be so treated.

21. It is further understood and agreed that the Operating Company shall have, and is hereby given, the right to sell or otherwise dispose of, for cash or otherwise, and on such terms and conditions as it shall decide upon, without accounting to the Owner therefor, any and all machinery, equipment and tools now on the property, and to use such funds as it sees fit.

22. It is further understood and agreed that the only supplies now remaining at the property

amount to approximately the sum of One Thousand (\$1,000.00) Dollars, and that the Operating Company shall have, and is hereby given, the right to use and dispose of any and all such supplies, in such manner as it sees fit without accounting to the Owner therefor.

23. In the event that the Operating Company shall at any time advance for or on behalf of the Owner any funds for the payment of its office expense, running expense, operating expense, or otherwise, the Operating Company is hereby given the right and shall have the right to reimburse itself, for such funds so advanced or so paid, out of the first monies that would otherwise be due and payable to the Owner.

24. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and shall be a covenant running with the land.

In Witness Whereof the said parties have caused these presents to be executed in their behalf by their respective officers thereunto duly authorized and their seals hereunto duly affixed and duly attested, as of the day and year first hereinabove written.

MUTUAL GOLD CORPORATION

By .....

President

Owner



Attest:

.....  
Secretary.

By .....

President  
Operating Company.

Attest:

.....  
Secretary.

Attached to this Contract were the following Exhibits—

Exhibit A—Purchase Contract—See Pages 1 to 9 of Contract File.

Exhibit B—Supplemental Agreement—See Pages 13-14 of Contract File.

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PLAINTIFFS' EXHIBIT 10

Minutes of Meeting of Directors of  
Mutual Gold Corporation

Held August 6, 1938

The Board of Directors of the Mutual Gold Corporation met at the office of the Company at 401 Fernwell Building, Spokane, Washington, on Saturday the 6th day of August, A. D., 1938, at the hour of 9:30 A. M. pursuant to adjournment.

The meeting was called to order by President J. E. Stiegler, who presided, Vice President R. P. Woodworth acting as Secretary.



The office of the company being crowded, the meeting was immediately adjourned to be convened at the office of the company at 745 Peyton Bldg., Spokane, Washington, at which place it forthwith reconvened.

Roll call showed following results:

Present—J. E. Stiegler, W. L. Grill, G. H. Ferbert, J. A. Vance, R. F. Collins, R. P. Woodworth

Absent—F. T. Hickcox.

Messrs. Lloyd J. Vance and R. J. Cole were also present.

Unapproved minutes of meetings were read, signed and approved.

Mr. Lloyd J. Vance presented an offer wherein he agreed to form a corporation to take over and manage the property of the company, a copy of which offer is attached to the minutes of the annual stockholders' meeting held on this date and hereby referred to and made a part hereof.

Mr. Woodworth presented forms of resolutions which he had prepared for submission to the stockholders that these matters might be properly presented to them and which resolutions conformed with the action taken by the directors at their last meeting. No objection was made thereto.

After some discussion, no action being taken, the meeting adjourned to be reconvened at the same place by the new Board of Directors immediately following the annual meeting of the stockholders.

The Board reconvened immediately following the annual meeting of the stockholders. Mr. J. E. Stieg-

ler was chosen temporary chairman and R. P. Woodworth temporary secretary.

Roll call showed the following results:

Present—J. E. Stiegler, W. L. Grill, G. H. Ferbert, J. A. Vance, R. F. Collins, R. P. Woodworth.

Absent—F. T. Hickcox.

The Directors present qualified by subscribing to the oath of office which was ordered inserted in the minute book immediately following the minutes of this meeting.

The following officers were duly nominated and elected:

J. E. Stiegler, President

J. A. Vance, Vice President

R. P. Woodworth, Vice President

R. F. Collins, Vice President

E. Fuson, Secretary

E. Fuson, Treasurer

E. D. Weller, Attorney

The officers elected, who were present, thereupon accepted the offices to which each had been elected.

Mr. Ferbert and Mr. Collins then stated that they would get Mr. Garbutt on the long distance 'phone and obtain from him a telegram setting forth the terms of his proposition to form a corporation to take over and manage the property, and that they would submit same to the Board, and requested that the meeting be adjourned to reconvene at 7:00 o'clock P. M. at 745 Peyton Building, Spokane, Washington. On motion duly made, seconded and carried, the meeting was adjourned to be reconvened

at 7:00 o'clock P. M. at 745 Peyton Building, Spokane, Washington.

The meeting reconvened at 7:00 o'clock P. M. on Saturday the 6th day of August, A. D., 1938, at 745 Peyton Building, Spokane, Washington, pursuant to adjournment.

The meeting was called to order by J. E. Stiegler, President, R. P. Woodworth, Vice President acting as recording officer. The same directors were present. Mr. Lloyd J. Vance and Mr. R. J. Cole were also present.

Mr. G. H. Ferbert moved that he and Mr. Collins be sent to Los Angeles to contact Mr. Garbutt and the company pay their expenses. There was no second to said motion, whereupon Mr. Ferbert moved that he and Russell Collins be sent to Los Angeles to contact Mr. Garbutt without expenses to endeavor to secure a contract with Mr. Garbutt. Mr. Grill moved an amendment to said motion, that they be required to report back immediately. The amendment was accepted by Mr. Ferbert and Mr. Collins, duly seconded, and put to a vote. Mr. Collins, Mr. Stiegler, Mr. Ferbert, and Mr. Grill voted in favor thereof. Mr. Vance and Mr. Woodworth voted against said motion.

Mr. Woodworth stated that in his opinion, in view of the fact that Mr. Ferbert and Mr. Collins were evidently interest parties, that he did not consider the motion had passed. Mr. Grill stated that it had passed and the directors voting in favor of said motion agreed with him.

Mr. Lloyd J. Vance thereupon presented the withdrawal of his offer and stated that unless the board intended to accept said offer at once that he wished to withdraw it.

Mr. Woodworth stated to the board that it was his opinion that the offer should be accepted at once; that the proposed form of contract submitted with said offer and as a part thereof, had been prepared by him, that if anything was to be done toward putting a mill on the property this year that action would have to be taken at once. That on the approval of Mr. Lloyd Vance's offer by the Board at its last meeting, believing that the stockholders would authorize the Board to enter into some such form of agreement, Mr. Cole, Mining Engineer, had been to California for Mr. Vance, that arrangements had already been made to put in the power line at once, that mill machinery and equipment capable of handling over 150 tons per day was ready to be moved in, and that trucks were already arranged for to haul it in as well as additional mine equipment and that everything was ready to move immediately if the Board would accept Mr. Vance's offer. That the proposed offer that Mr. Collins and Mr. Ferbert had stated they would be able to get from Mr. Garbutt, according to their own admissions, contained no better terms and in some respects was not so good in that there was no assurance that the stockholders would be permitted to participate therein the same manner. That no definite offer of any kind from Garbutt was before the

Board nor any definite assurance that any offer as favorable could be secured from him. That a definite concrete offer was before the Board as made by Mr. Vance. That it was admitted that the only deal which had been proposed to Mr. Garbutt was one based on the offer which Mr. Vance had made and the Board approved at its last meeting and that it was not fair or honest for the Board to turn down Mr. Vance's offer and that same should be accepted at once, and moved that it be so accepted.

It was moved by Mr. Grill, seconded by Mr. Ferbert that no action be taken on the offer of Mr. Lloyd J. Vance by the Board until report had been received as to what Mr. Garbutt would do with respect to entering into a like contract with the company. The matter was put to a vote, Messrs. Grill, Stiegler, Collins and Ferbert voting in favor thereof, Mr. Vance and Mr. Woodworth voting against said motion. Mr. Vance's offer was thereupon withdrawn by him.

It was moved by Mr. Grill, seconded by Mr. Collins that the meeting be adjourned to be reconvened at the Vance Hotel, Seattle, Washington, on Saturday the 13th day of August, A. D., 1938, at 10:00 o'clock A. M. Messrs. Stiegler, Ferbert, Collins, Grill and Vance voted in favor of said motion, Mr. Woodworth voting against same.

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President.

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Recording Officer.



## PLAINTIFFS' EXHIBIT 11

August 25, 1938

Mutual Gold Corporation  
401 Fernwell Building  
Spokane, Wash.  
Gentlemen.

This will inform you that we have elected to cancel and we hereby cancel your option and contract to purchase the Log Cabin Mine, which option and which contract is dated July 13, 1932. This action is final and absolute.

We recognize that this cancellation, while legal, may work a great hardship upon your stockholders but should you wish to negotiate for rehabilitation of this contract you may negotiate with the undersigned who will give the matter consideration provided your defaults are cured and other points of difference are adjusted to his satisfaction.

(Signed) FRANK A. GARBUTT

Frank A. Garbutt—duly authorized representative of the owners, Chandis Securities Company and Alice Clark Ryan.

cc to

Mutual Gold Corporation  
Box 377, Leevining, Cal.

cc to

Mutual Gold Corporation  
Attention: Mr. J. A. Vance, General Manager,  
Vance Hotel,  
Seattle, Washington.



PLAINTIFFS' EXHIBIT 12

Frank A. Garbutt  
Suite 712 - 411 West 7th Street  
Los Angeles, California

September 2, 1938

Mutual Gold Corporation, and  
J. A. Vance, General Manager,  
Fernwell Building,  
Spokane, Wash.

Gentlemen:

I have the letter of August 29th signed by J. A. Vance, General Manager Mutual Gold Corporation, addressed to me at 411 West Seventh Street, which states:

“I cannot accept cancellation of the contract to purchase the Log Cabin Mine” . . . “The Mutual Gold Corporation has performed the contract on its part in every particular” . . . “I would thank you to specify the matters claimed to be in default” . . . “Please promptly advise me.”

Although I think we have no obligation to acquaint you with your defaults, I will quote parts of your contract of July 13, 1932:

“The said buyers agree to well and sufficiently timber the tunnels, shafts and drifts . . . and repair all old timbering in such workings and in all existing openings which are now open and which show any mill ore . . . for the preservation of said mine.”

“After said shaft has been sunk to the intersection of the vein and drifted on for a distance of not less than 200 feet, if by that time sufficient tonnage of commercial ore is in sight to justify a mill, and if not, as soon as sufficient tonnage of commercial ore is in sight, the buyers agree to build a suitable mill and mill buildings and to install proper milling machinery for the economical and proper milling of said ore and to proceed without delay in a minerlike fashion to mill and market said ores which have been developed on said property”.

“In consideration of the foregoing conditions . . . and in consideration of their faithfully keeping all of the covenants herein contained said sellers hereby give said buyers the right to purchase” . . .

“Time is of the essence of this agreement, and it is expressly agreed that in case of any violation by the buyers of any covenant herein contained or on their failure or refusal to carry out or comply with all of the terms and conditions of this agreement . . . the sellers at their election may terminate this agreement.”

“In the event of a default by the said buyers in performing any of the conditions or covenants herein set forth . . . the sellers may at their option give notice to said buyers of the termination of this agreement by depositing such notice in the United States mail, registered and postage prepaid, addressed to said buyers at the

mine and at the last known postoffice address given to said sellers by said buyers, and the depositing of said notices and the affidavit by the sellers or any of them that same have been deposited shall be conclusive proof that the notices were given and this agreement shall be terminated thereby at the option of said sellers.”

“The sellers may exercise said option and give such notice in accordance therewith.”

Then follows another clause stating

“In the event of a default by the buyers in the performance of some covenant or conditions in itself immaterial and of which default they may be unaware the sellers, before giving notice as above set forth, shall notify said buyers of the default complained of and shall allow them thirty days from the date of giving said notice in which to cure same and remedy said defaults so complained of.”

Your defaults do not come under this category.

We are advised competently and with what we regard as absolute proof that in the fall of 1937 the shaft had reached the intersection of the vein, had been drifted on a distance of not less than 200 feet and that sufficient tonnage of commercial ore was in sight to justify a mill. However this may be, at some time shortly thereafter and, in any event, not later than early February, 1938, a large amount of commercial ore having been encountered you conspired with others interested in your venture to shut

down the property and, as you expressed it, "get hold of the contract." Pursuant to this plan you made efforts and caused efforts to be made to purchase the sellers' interest in the contract to you for less than it was worth, withholding from them and also, we are informed, withholding from some of your own stockholders and directors, true information of the condition of the mine. It was your plain duty, under the exact wording of your contract, to "build a suitable mill and mill buildings and to install proper milling machinery . . . and proceed without delay . . . to mill said ores."

That since the time of your discovery a period of six months has elapsed and prior thereto a considerable time elapsed during which you were wholly in default.

There are other grounds for default which it is not necessary to go into here. However, for your further information, will state that we have your admissions and the indisputable evidence of others that the milling equipment and machinery on the property is inadequate, not practical and not economical for the treatment of these ores.

A material consideration for the terms of payment given you was that you would proceed upon the development of ore to install proper milling machinery for the economical milling of said ore and to proceed without delay to mill said ores and to pay the proceeds to the sellers as in your contract provided.

Your fiction that you are not in default finds no favor in our eyes. It is wholly in accord with your past tactics of concealment and evasion of your responsibilities.

In our notice to you of August 25 we frankly stated our attitude toward the Mutual and the conditions under which we might negotiate for a rehabilitation of your contract.

The undersigned, as you are aware, has been negotiating with the Mutual for a contract looking to the operation of its property. I have no desire to undertake such responsibilities and the only consideration for so doing is to provide the stockholders with an alternative so that they would not be forced to accept the manifestly tricky and unfair contract that you have attempted to force upon them.

To show you the lack of esteem in which this effort of yours is held, I quote, in part, from one of the communications from a stockholder regarding it:

“A goodly number of the stockholders have expressed their views and not one of them, excepting Woodworth, seemed in favor of it, and they run all the way from downright panic, bogged down like a cow in the mud, some few are quite bellicose and want to fight, and I think they would welcome anything of a constructive and fair nature that might give promise of pulling them out of the jam.

“Personally, I think this proposal set forth by the Vances is one of the most vicious I have



seen, and I am doubtful if it could possibly get by the Security Act; if so I would have less faith in that law than I now have.”

I trust I have made my position entirely clear. The owners have a friendly feeling for the stockholders as also have I, but my first duty is to the owners whom I represent.

Your liability for your acts or omissions is to your stockholders who, it seems to me, could recover from you if they lose their property by reason of your laches.

Yours truly,

(Signed) FRANK A. GARBUTT.

FAG-C

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#### PLAINTIFFS' EXHIBIT 13

is set forth in the Complaint, as Exhibit 6 thereto, at page 51.

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#### PLAINTIFFS' EXHIBIT 14

#### MINUTES OF ADJOURNED ANNUAL MEETING OF THE BOARD OF DIRECTORS OF MUTUAL GOLD CORPORATION

The adjourned annual meeting of the board of directors of Mutual Gold Corporation, a corporation, was held at the Vance Hotel in the City of Seattle, King County, Washington, beginning at 10 o'clock A. M. on the 7th day of September, 1938,

there being present Mr. J. E. Stiegler, Mr. J. A. Vance, Mr. F. T. Hickcox, Mr. R. P. Woodworth and Mr. W. L. Grill and Mr. G. H. Ferbert. Mr. Russell F. Collins was absent.

Mr. Grill made a brief report of the conferences had with Mr. Garbutt at Los Angeles and then read the contract between the Mutual Gold Corporation and Frank A. Garbutt, which had been executed by Mr. Garbutt and Mr. Stiegler, as the president of the corporation, subject to the ratification thereof by the board of directors of the company.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that the action of the president of this company, Mr. J. E. Stiegler, in executing that certain written contract dated the 2nd day of September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, be ratified, approved and confirmed, as fully and to the same extent as though originally authorized by the board of directors of this company, and that the said contract be and the same is hereby ratified, approved and confirmed in all details; and that the president of this company, Mr. J. E. Stiegler, be and he hereby is authorized and directed to carry out and perform the same and to execute with the secretary of this company all deeds, bills of sale and documents of every kind and character whatsoever necessary to make said contract legally effective and to carry out the terms and provisions thereof, subject to the ratification of the action of the board thereon by a

special meeting of the stockholders to be called for such purpose.

It was moved by Mr. Woodworth and seconded by Mr. Vance, as a substitute motion, that the offer of Lloyd Vance be accepted. Mr. Woodworth and Mr. Vance voted in favor of said substitute motion and Mr. Hickcox, Mr. Ferbert and Mr. Grill voted against said substitute motion and the same was not carried.

Upon a vote being had upon the original motion, said motion carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Hickcox and Mr. Grill. Mr. Woodworth and Mr. Vance voted "No" thereon.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that this corporation do and it hereby does accept that certain contract bearing date the 2nd day of September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, which contract has been read to the Board, and all of the terms and provisions thereof; and that the president of this corporation, Mr. J. E. Stiegler, be and he hereby is authorized and directed to execute said contract, if the previous ratification thereof is not legally sufficient for and on behalf of this corporation, and to execute any and all documents, papers, bills of sale, deeds and conveyances necessary to make said document legally effective and to carry out the terms, conditions and provisions thereof; this action of the board to be subject to ratification by the stockholders at a spe-

cial meeting to be called for such purpose. Said motion carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Hickcox and Mr. Grill. Mr. Woodworth and Mr. Vance voted "No" thereon.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that the president of this corporation, Mr. J. E. Stiegler, be and hereby is authorized and directed, for and on behalf of this corporation, to borrow the sum of \$25,000 from any person, firm or corporation, upon the best terms possible, giving the note of this corporation or other written obligation, and for and on behalf of this corporation to execute a pledge or assignment of any or all of the assets of the corporation as security therefor. Said motion carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Hickcox and Mr. Grill. Mr. Woodworth and Mr. Vance voted "No" thereon.

It was regularly moved by Mr. Woodworth and seconded by Mr. Vance that proxies for the said stockholders' meeting be sent out in blank to the stockholders of the company by the secretary. Upon a vote being had Mr. Vance and Mr. Woodworth voted in favor thereof and Mr. Ferbert, Mr. Hickcox and Mr. Grill voted against the same and said motion did not carry.

It was regularly moved by Mr. Grill and seconded by Mr. Hickcox that proxies be sent out by the secretary designating J. E. Stiegler or blank the proxy of such stockholder, to vote at said special meeting of the stockholders. Mr. Grill, Mr. Ferbert and Mr. Hickcox voted in favor thereof and Mr.

Vance and Mr. Woodworth voted against the said motion. Said motion was carried.

It was regularly moved, seconded and, upon a vote being had, carried, that the secretary of the corporation be and is authorized and directed to call a special meeting of the stockholders of the company at the earliest possible time, for the purpose of ratifying or refusing to ratify the action taken by the board in connection with the said contract dated the 2nd day of September, 1938, between Mutual Gold Corporation and Frank A. Garbutt, and that such meeting also be called for the consideration and acting upon the offer of Lloyd J. Vance, or any other offer from any other person, firm or corporation, and the authorization of the board to accept and execute the same.

No further business coming before the directors, the meeting thereupon adjourned.

(Signed) W. L. GRILL,  
Secretary Pro Tem.

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Mr. Anderson: Which will be Plaintiffs' Exhibit 14. I offer in evidence an unsigned letter dated September 9, 1938, to Mutual Gold Corporation, J. A. Vance, General Manager, and J. E. Stiegler, President; subject matter is notice of default, and I will ask counsel if he will stipulate that that was a copy of Mr. Garbutt's letter of that date and to those persons.

Mr. Hinckle: So stipulated.



Mr. Anderson: Do other counsel, if your Honor please, [39] likewise stipulate?

Mr. Grill: Yes; on the statements made.

The Court: It may be marked.

The Clerk: Exhibit 15. [40]

PLAINTIFFS' EXHIBIT 15

September 9, 1938

Mutual Gold Corporation,  
Mr. J. A. Vance, General Manager,  
Mr. J. E. Stiegler, President  
401 Fernwell Building,  
Spokane, Washington  
Gentlemen:

On August 25th we served you with notice of default on your contract of July 13, 1932, and notified you of its termination and terminated it as in said contract provided.

In this same communication we also advised you of our willingness to negotiate for the reinstatement of said contract under certain conditions which have not been met.

Instead we received a communication from your Manager, J. A. Vance, declining to "accept cancellation" and stating:

"Mutual Gold Corporation has performed the contract on its part in every particular."

This is so far from the truth that we now, without prejudice to said termination of August 25, 1938, again inform you that, in accordance with the terms



of said agreement of July 13, 1932, we have elected to terminate, and do hereby terminate, your option and contract under said agreement to purchase the Log Cabin Mines and other property described in said agreement, and do hereby terminate said agreement in its entirety.

Also that we will not negotiate for a reinstatement of same unless and until we receive from you a statement in writing satisfactory to us as to the reason for your breaches of the following conditions of your contract and your acts and statements following:

1. Your agreement to keep the ore intact above the 125 foot level.
2. Post non-liability notices and maintain same after posting.
3. Repair and keep in repair all old timbering in existing openings.
4. Strictly comply with the Workmen's Compensation Act.
5. Install a proper mill for the economical and proper milling of said ore.
6. Proceed without delay to mine, mill and market said ores.
7. To impound all mill tailings which assay over \$1.00 per ton.
8. Pay to the sellers any excess over \$8.00 per ton.
9. Work continuously not less than 150 shifts of competent miners per month.

10. Obtain and furnish to the sellers a release or waiver from your vendors before you allow any material, machinery or supplies to be brought upon said property.

11. Obtain like releases from all employees and furnish same to sellers before employing any labor.

12. Your ordering our representative off of the property.

13. Your concealment from us of material information.

14. Your statement that "Mutual Gold Corporation has performed the contract on its part in every particular". As long as you take this position, there can be no negotiations.

Copies to

Mutual Gold Corporation

Box 377, Leevining, Cal.

Mutual Gold Corporation,

Attention: Mr. J. A. Vance, Gen. Mgr.

## PLAINTIFFS' EXHIBIT 16

Mutual Gold Corporation  
401 Fernwell Building  
Spokane, Wash.

## Directors

J. A. Vance, Seattle, Wash.  
Russell F. Collins, Leevining, Cal.  
R. P. Woodworth, Spokane, Wash.  
J. E. Stiegler, Naches, Wash.  
W. L. Grill, Seattle, Wash.  
F. T. Hickcox, Tacoma, Wash.  
G. H. Ferbert, Naches, Wash.

## Officers

J. E. Stiegler, President  
R. P. Woodworth, Vice-President  
J. A. Vance, Vice-President  
Russell F. Collins, Vice-President  
E. Fuson, Secy.-Treas.

September 12, 1938.

To the Stockholders of Mutual Gold Corporation:

The stockholders of the company at the annual meeting held on the 6th day of August, 1938, authorized the board of directors to sell, lease, deal with, exchange or dispose of any part of or all of the assets of the corporation, for cash or otherwise, including exchanging for shares in another corporation, domestic or foreign, as they in their discretion might deem expedient, advisable or desirable.

Prior thereto there had been submitted to the board of directors an offer by Lloyd J. Vance. At

the meeting of the board of directors following the stockholders' meeting, the board was advised that an offer would be received from Mr. Cecil B. deMille. The board meeting was adjourned to a subsequent date, at which a proposal was submitted, which proposition was considered by the board and attempts made to secure certain changes therein. The board deemed it advisable to consider such proposition, as it was presented by Mr. Frank A. Garbutt, the agent of the owners of the Log Cabin group of claims.

During the course of the consideration of the respective offers, a notice of cancellation of the company's contract of purchase covering the Log Cabin group of claims was received by the company, which notice was signed by Mr. Frank A. Garbutt.

In order to bring the matter to a head, the board authorized Mr. Stiegler, Mr. Ferbert, Mr. Vance, Mr. Hiccox and Mr. Grill to go to California and confer with Mr. Garbutt. Thereupon, Mr. Ferbert, Mr. Collins, Mr. Grill and the writer conferred with Mr. Garbutt at Los Angeles and certain modifications of the contract proposed by Mr. Garbutt were obtained and a contract signed by the writer, as president of the company, subject to ratification by the board. The terms of the contract were the best it was possible to obtain from Mr. Garbutt.

A board meeting was held on the 7th day of September, at which the action of the president of the company was ratified and the contract approved by the board, subject to its ratification by the stock-

holders of the company. The board members voting in favor of the ratification were Mr. Ferbert, Mr. Hickcox, Mr. Grill and Mr. Stiegler. Those voting against were Mr. Woodworth and Mr. Vance. The writer was advised that the contract was approved by Mr. Collins, the one director absent. It was the feeling of the writer, as well as the other members of the board voting in favor of the contract, that if it was not accepted the company would become involved in long and expensive litigation with the owners of the property over the attempted cancellation of the contract, and even though the company were ultimately successful in such litigation, little might remain for the stockholders after the termination thereof.

The writer wishes to state that if a longer time had been available, and the conditions different, a much better contract might have been obtained from other sources. However, in view of the entire situation and the fact that the company has unpaid obligations and no funds to carry on, the board members voting in favor of the proposition felt that the company had no alternative.

You will find enclosed herewith proxy made out in favor of the writer or blank. The writer wishes you to feel at liberty to exercise your best judgment in the matter and if you wish to have your proxy run to anyone else, eliminate his name and place the name of anyone you desire therein, if it is impossible for you to be personally present at the stock-



holders' meeting. However, the undersigned urges you to be either present at said meeting or represented by proxy.

Sincerely yours,

J. E. STIEGLER,

JES:pb

President.

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PLAINTIFFS' EXHIBIT 17

NOTICE OF SPECIAL MEETING OF STOCK-  
HOLDERS OF MUTUAL GOLD  
CORPORATION

Notice Is Hereby Given that in accordance with Resolution of the board of directors of Mutual Gold Corporation passed on September 7, 1938, a special meeting of the stockholders of said corporation will be held at the office of the company at 401 Fernwell Building, Spokane, Washington, on September 24th, 1938, at eleven o'clock A. M. for the purpose of ratifying or refusing to ratify the action taken by the said board of directors in accepting a certain contract, dated September 2nd, 1938, by and between Mutual Gold Corporation and Frank A. Garbutt, said acceptance being subject to ratification by the stockholders at a special meeting called for that purpose and to consider at said meeting and pass upon the offer of Lloyd J. Vance or any other offer from any other person, firm or corporation, includ-

ing authorization to the board of directors to accept and execute same.

MUTUAL GOLD CORPORATION,  
By E. FUSON,

Secretary.

[Written on reverse side.]

Sept 15-1938

Mr. Vance:

I am sending you my proxy as if I send it to Spokane it may be lost.

Thanks for your letter.

JENNIE M. TATTERSALL

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PLAINTIFFS' EXHIBIT 18

(Postcard addressed to)

Mutual Gold Corporation,  
Fernwell Building,  
Spokane, Wash.

PROXY

Know All Men By These Presents that I, the undersigned, do hereby constitute and appoint R. P. Woodworth my true and lawful attorney to represent me at the special meeting of the stockholders of Mutual Gold Corporation to be held on the 24th day of September, 1938, at eleven o'clock A. M. at the office of the company, 401 Fernwell Building, Spokane, Washington, and do hereby authorize and

empower him to vote at said meeting and at any adjournment thereof for me and in my name and stead upon the stock then standing in my name on the books of said company, and I hereby grant my said attorney all the powers that I should possess if personally present at said meeting.

Witness my signature this 15th day of September, 1938.

JENNIE M. TATTERSALL

Witnessed By:

GEO. G. HANNAN

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PLAINTIFF'S EXHIBIT 19

Mutual Gold Corporation  
401 Fernwell Building  
Spokane, Wash.

September 16, 1938.

J. E. Stiegler

R. P. Woodworth

J. A. Vance

Russell F. Collins

W. L. Grill

F. T. Hiccox

G. H. Ferbert

Directors of Mutual Gold Corporation:

Notice is hereby given that a Special Meeting of the Board of Directors of the Mutual Gold Cor-

poration is called to be held at 610 Colman Building, Seattle, Washington on Monday, the 19th day of September, 1938 at the hour of 10:00 o'clock A. M. for the purpose of reconsidering the action taken by said Board upon the ratification by the Board of the contract between Frank A. Garbutt and the Mutual Gold Corporation dated September 2, 1938 and the further purpose of considering any other proposal that may be brought before said meeting for the development and operation of the Mutual Gold Corporation properties in Mono County, California, and any other matters incident or pertaining to the aforementioned business.

(Signed) J. E. STIEGLER

President

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#### PLAINTIFFS' EXHIBIT 20

Frank A. Garbutt

Suite 712—411 West Seventh Street

Los Angeles, California

September 12, 1938.

Mr. M. F. Haley,

Leevining, Cal.

Dear Mr. Haley:

When I talked with you last Saturday and Sunday you were to gather certain information and write me your conclusions and recommendations at once with a list of what changes you wanted to make and what you needed to start up the mill with-

out delay. A week later I have not heard from you.

I promised to write you not later than Wednesday afternoon or Thursday morning and this I did. Knowing your condition as you told it to me, I put you on my payroll for two weeks so you could bridge over the delay without hardship to yourself until the mine would be ready to employ you.

I am particular about keeping any promises I make and like those with whom I plan to become associated to be the same. Otherwise there can be no mutual confidence.

Sincerely,  
F. A. GARBUTT.

FAG-C.

P. S. You will not, of course, go on my payroll until you commence work.

F. A. G.

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PLAINTIFFS' EXHIBIT 21

(Post Card Addressed to)

Lloyd J. Vance,  
Joseph Vance Bldg., Spokane, Wash.

Spokane, Washington  
September 20, 1938

Stockholders of Mutual Gold Corp.:

On Monday, September 19, 1938 your Board of Directors reconsidered their previous action upon the proposed contract with Mr. Frank A. Gar-



butt, regarding the operation of the Mutual Gold mining property and ratified and approved same in accordance with the stockholders' authority of August 6th, 1938.

It will therefore not be necessary to hold the Special Stockholders' Meeting called for September 24th, and same is cancelled by order of the Board.

J. E. STIEGLER  
President

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#### PLAINTIFFS' EXHIBIT 22

##### Minutes of Special Meeting of Directors of Mutual Gold Corporation

Pursuant to due notice, a special meeting of the board of directors of Mutual Gold Corporation was held at 610 Colman Building, in the city of Seattle, King County, Washington, beginning at 10 o'clock a. m. on Monday, the 19th day of September, 1938, there being present Mr. J. E. Stiegler, Mr. J. A. Vance, Mr. G. H. Ferbert, Mr. F. T. Hickcox, Mr. R. P. Woodworth, Mr. W. L. Grill and Mr. Russell F. Collins.

The President asked Mr. Grill to act as secretary of the meeting.

The secretary of the meeting read the notice calling the meeting and the affidavit of the secretary of the company regarding the mailing of the notice.

The secretary of the meeting thereupon read the last notice of cancellation given by the owners of the Log Cabin mining claims.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that the board reconsider the action taken by it at its meeting on the 7th day of September upon the following proceedings:

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that the action of the president of this company, Mr. J. E. Stiegler, in executing that certain written contract dated the 2d day of September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, be ratified, approved and confirmed, as fully and to the same extent as though originally authorized by the board of directors of this company, and that the said contract be and the same is hereby ratified, approved and confirmed in all details; and that the president of this company, Mr. J. E. Stiegler, be and he hereby is authorized and directed to carry out and perform the same and to execute with the secretary of this company all deeds, bills of sale and documents of every kind and character whatsoever necessary to make said contract legally effective and to carry out the terms and provisions thereof, subject to the ratification of the action of the board thereon by a special meeting of the stockholders to be called for such purpose. \* \* \*

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that this corporation do and it hereby does accept, that certain contract bearing date the 2d day of September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, which contract has been read to the board, and all of the terms and provisions thereof; and that the president of this corporation, Mr. J. E. Stiegler, be and he hereby is authorized and directed to execute said contract, if the previous ratifications thereof is not legally sufficient for and on behalf of this corporation, and to execute any and all documents, papers, bills of sale, deeds and conveyances necessary to make said document legally effective and to carry out the terms, conditions and provisions thereof; this action of the board to be subject to ratification by the stockholders at a special meeting to be called for such purpose.

The following voted in favor of said motion: Mr. Stiegler, Mr. Ferbert, Mr. Collins, Mr. Hickcox and Mr. Grill; and the following against said motion: Mr. Woodworth and Mr. Vance. The President declared the motion carried.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that, in view of the authority and power given to the board of directors by the stockholders at a special meeting of the stockholders called on the 6th day of August, 1938, and in view

of the present financial condition of the company, the action of the president of this company, Mr. J. E. Stiegler, in executing that certain written contract dated the 2d day of September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, be ratified, approved and confirmed, as fully and to the same extent as though originally authorized by the board of directors of this company, and that the said contract be and the same is hereby ratified, approved and confirmed in all details; and that the president of this company, Mr. J. E. Stiegler, be and he hereby is authorized and directed to carry out and perform the same and to execute with the secretary of this company all deeds, bills of sale and documents of every kind and character whatsoever necessary to make said contract legally effective and to carry out the terms and provisions thereof. Upon a vote being had upon said motion, said motion was carried by the votes of Mr. Hickcox, Mr. Collins, Mr. Grill, Mr. Stiegler, and Mr. Ferbert. Mr. Woodworth and Mr. Vance voted "No" upon said motion.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that, in view of the authority and power given to the board of directors by the stockholders at a special meeting of the stockholders called on the 6th day of August, 1938, and in view of the present financial condition of the company, this corporation do and it hereby does accept that certain contract bearing date the 2d day of

September, 1938, between Mutual Gold Corporation, a corporation, and Frank A. Garbutt, and all of the terms and provisions thereof; and that the president of this corporation, Mr. J. E. Stiegler, be and he hereby is authorized and directed to execute said contract, if the previous ratification thereof is not legally sufficient for and on behalf of this corporation, and to execute any and all documents, papers, bills of sale, deeds and conveyances necessary to make said document legally effective and to carry out the terms, conditions and provisions thereof. Said motion carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Collins, Mr. Hickcox and Mr. Grill. Mr. Vance and Mr. Woodworth voted "No" thereon.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that the president of this corporation, Mr. J. E. Stiegler be and hereby is authorized and directed, for and on behalf of this corporation, to borrow the sum of \$25,000 from any person, firm or corporation, upon the best terms possible, giving the note of this corporation or other written obligation, and for and on behalf of this corporation to execute a pledge or assignment of any or all of the assets of the corporation as security therefor. Said motion carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Hickcox, Mr. Collins and Mr. Grill. Mr. Woodworth and Mr. Vance votes "No" thereon.

Mr. Woodworth thereupon presented his resignation as vice-president and a director of the com-



pany, to take effect immediately. Mr. Vance thereupon presented his resignation as vice-president and director, to take effect immediately, and would not reconsider such action. Said resignations were thereupon duly and regularly accepted.

Mr. E. D. Weller was thereupon duly and regularly elected vice-president of the company, to fill out the unexpired term of R. P. Woodworth, resigned, as vice-president of the company, to serve until his successor shall be elected and shall qualify.

Mr. Vance thereupon presented to the meeting the statements of Mr. J. R. Sturgeon for compensation and Mr. M. F. Haley for overtime. No action was taken thereon at the meeting.

It was regularly moved by Mr. Grill and seconded by Mr. Ferbert, that the secretary of the company be authorized and directed to notify the stockholders of the company of the action of the board in ratifying and/or authorizing and approving the contract of F. A. Garbutt, and to further notify the stockholders that the special meeting of the said stockholders called for the 24th day of September, 1938, had been called off by the board. Upon a vote being had, said motion was carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Hickcox, Mr. Collins and Mr. Grill. Mr. Vance and Mr. Woodworth voted "No" thereon.

No further business coming before the directors, the meeting thereupon adjourned.

(Signed) W. L. GRILL

Secretary of the Meeting



## PLAINTIFFS' EXHIBIT 23

is set forth in the Complaint, as Exhibit 7 thereto,  
at page 58.

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## PLAINTIFFS' EXHIBIT 24

is set forth in the Complaint, as Exhibit 8 thereto,  
at page 60.

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## PLAINTIFFS' EXHIBIT 25

is set forth in the Complaint, as Exhibit 9 thereto,  
at page 62.

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## PLAINTIFFS' EXHIBIT 26

Frank A. Garbutt  
Suite 712—411 West Seventh Street  
Los Angeles, California

September 23, 1938

To the Board of Directors  
Mutual Gold Corporation,  
Mr. J. E. Stiegler, President.

## Progress Report

Your bargain with me and its purposes have been thoroughly discussed heretofore with a majority of your Board and your attorney. I expect to interest in your enterprise entirely satisfactory and responsible parties and I hope that my connection therewith will prove to be only a stop-gap for I

have no desire, at my age, to again become actively interested in mining.

I have also heretofore made it sufficiently clear to you that my first duty is to the owners of the property, whom I represent, but that this duty is not necessarily incompatible with a desire to protect your stockholders.

Time is a very essential element with you and for one reason or another not necessary to go into here, a lot of time you could ill afford has been wasted.

Early in the fall of 1937 you had reached the 250 level and drifted into mill ore at which time under your contract you were obligated to build a suitable mill for the economical and proper milling of the ore and to proceed without delay to market same.

This you did not proceed to do. To the contrary, these facts were concealed from the owners while your manager attempted to buy out the owners at an unfair discount and as late as the early part of February wrote to an associate as follows:

“ . . . under the circumstances we can't do anything except fire the whole crew and shut down or get ahold of the contract.”

This was a deliberate and willful violation of your contract and for this and other reasons, the owners, when the true conditions became known to them, served upon you a notice of termination of your contract in accordance with its terms.

Prior to this, however, your manager still delayed complying with your contract with the owners while he attempted to negotiate a contract with either himself or his son which looked to giving them control of the property upon terms which your directors state were wholly unsatisfactory.

This delay extended up to the latter part of June and culminated at a stockholders' meeting in August, 1938, at which a report by Mr. Cole was presented to your stockholders. This report purported to have been made some time in June and various metallurgical determinations set forth therein were dated June 14 and June 20th, respectively.

These delays are further rendered inexcusable by the fact that your manager had received a written report from Mr. Keily, dated March 10, acquainting him with the true conditions at the mine which formed a record which also aids the owners in establishing a willful violation of their contract.

However, who ever caused these delays, the effects are the same except insofar as liability therefor is concerned. The time is gone and your position is jeopardized.

When you entered into your contract with me and its ratification was delayed for one reason or another while your opposing factions argued their differences, I realized that a loss of this season would be fatal to you and therefore, knowing that whatever the outcome a power line would be absolutely necessary, I guaranteed the Power Company the

cost of their survey and preliminary work to the trifling amount of \$500.00.

On receipt of your wire of September 19th that my contract had been fully authorized, I have done the following things:

1. Immediately ordered the power line, paid \$11,000 therefor and received the assurances of the Company that it would be completed by October 15th, and sooner if possible.

2. Engaged Mr. Russell Collins, one of your directors, to act as assistant in the field to expedite all work as much as possible; to keep in touch with your Board of Directors and obtain your advice and to keep you informed of the progress of our work.

3. I have engaged Mr. M. F. Haley, formerly in your employ, who was most highly recommended to me by Mr. Keily a few days before he died, and called him here in consultation. Being a practical mill man myself, it gives me pleasure to state I have found Mr. Haley to be thoroughly familiar with all of the details of his business and so far we have been in thorough agreement as to past operations and future procedure. I have had assays made for him so he could inform himself as to past results and estimate the future. We have discussed and listed his requirements and have ordered such things as required time to get and are receiving bids on current material and supplies, such as electric lamps, wiring, electric material, etc.

4. Have gone into the matter of tailings disposal and water pollution which appears to be a sticker with no possible satisfactory solution that does not involve future development from a different shaft in the distant future and have, I hope, devolved a temporary plan upon which Messrs. Collins, Haley, Sturgeon and I can agree for the immediate present that will enable us to acquire data and work out a feasible plan for the future. We have discussed this problem at length with competent engineers of the Western Machinery Co. and, after several days of figuring, they frankly admit their inability to solve it in a satisfactory manner. I have communicated with expert engineering firms in Salt Lake and Denver in an endeavor to find a solution. I am also working on a novel solution of my own which gives some promise.

5. We are lining up for consideration the necessary equipment, hoist, cage, compressor, cars, jack-hammers, receiver, mill, etc.

6. Metallurgical Investigations: I want to say in this connection that I have thoroughly studied Mr. Cole's report and, while not wishing to be considered as criticizing it in any way for what it purports to be, I do not find it either satisfactory or convincing.

Briefly, his heads and values are computed in various ways \$12.60 - \$13.40 - \$11.20 - \$15.65 - \$20.30 and \$13.00 and recovery by amalgamation from \$8.50 to \$5.60. I do not say that his computations are not correct or justified.



Neither do I say that the metallurgical investigations your manager had made in Los Angeles and Berkeley are not correct as far as they go but to me they are superficial and unconvincing and I believe it would be extremely hazardous to select and install a mill without further knowledge.

I have therefore sent a 150 lb. sample to the Colorado School of Mines, at Golden, whose equipment and experience are unexcelled for making metallurgical determinations; am consulting a leading engineering firm of Denver; have sent two 50 lb. samples to John Herman, of Los Angeles, who is well equipped for the determinations I desire to make here (he has done work for me for 20 years) and his reputation for care and accuracy is unsurpassed. I am consulting with R. A. Perez & Co. who made some of the tests for Mr. Vance; am making some tests in my own laboratory, which is well equipped and has been in continuous operation for 9 years, and will take such other steps as common prudence and these investigations dictate.

You will be kept advised through Mr. Collins of results.

In addition to the above and in view of your problems I recently visited Bodie, where a friend, Mr. Klipstein, is operating a large mill similar in flow to the one we propose to install, and the Empire, at Grass Valley, where a friend, Mr. Nobs, who has known me for 20 years, is in charge of an 80 stamp mill and cyanide plant, etc. of 400 tons daily ca-



capacity, about such a plant as we might use, so as to acquaint myself with modern practice.

I wish to assure you that as long as I am connected with the management that every stockholder, large or small, myself included, will receive exactly the same treatment.

There will be no withholding or coloring of information. No director, myself included, will receive any consideration as such. We are trustees for the stockholders. If we sink we will sink together. If we profit, we will profit proportionately. There will be no dodging of my responsibility to any stockholder of any corporation of which I am director or manager.

If you should have any cause for dissatisfaction I trust you will immediately communicate with me so that we may thrash it out without delay. I also want the benefit of all of the advice and suggestions that you can give me. We have a tough job and I want to do my part well.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

PLAINTIFFS' EXHIBIT 27

MUTUAL GOLD CORPORATION

401 Fernwell Building

Spokane, Washington

September 26, 1938.

To the Stockholders of  
Mutual Gold Corporation:

In connection with the deal which the company has concluded with Mr. Frank A. Garbutt, you will find enclosed herewith copy of a report which he has just sent to the board of directors of the Mutual Gold Corporation, which is self-explanatory.

Owing to the lateness of the season, it is impossible to purchase and install a new mill before next year. It appears from Mr. Garbutt's report that he plans to operate the property during the winter if weather conditions permit by making necessary changes so as to permit such operation. This should be for the best interests of the Mutual, as four or five months' further development work should result in the blocking out of a much larger body of ore. If this is the result, then it may be possible that Mr. Garbutt will construct a larger mill than his contract provides.

There is no question in my mind or in the minds of the members of the board that all of the stockholders of the Mutual Gold Corporation will be treated fairly and squarely by Mr. Garbutt and that their interests in the long run will have a greater value than if any other offer had been ac-

cepted, which would have occasioned unending litigation. The writer has been advised that various members of the board will send out letters to the stockholders giving their views of the entire situation.

You may also rest assured that the board of directors of the company, after a full and thorough consideration of the matter, did what in its judgment it deemed for the best interests of the company.

You will be kept informed from time to time as to the affairs of the company and the operation of the mine.

Yours sincerely,  
J. E. STIEGLER  
President

JES:pb

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PLAINTIFFS' EXHIBIT 28

October 3, 1938.

Mutual Gold Corporation,  
Mr. J. A. Vance, General Manager,  
Vance Hotel, Seattle, Wash.

Gentlemen:

Under date of August 25th, 1938, our representative, Frank A. Garbutt, served upon you a notice of termination of our contract with you as in said contract provided, absolute in its terms, but which left the door open to negotiations for a reinstatement if undertaken by you at that time.

Instead of opening such negotiations you replied on August 29th, 1938

“Mr. Frank A. Garbutt  
411 West Seventh Street  
Los Angeles, California.

Dear Sir:

A copy of your letter of August 25, 1938 to Mutual Gold Corporation has been received by me. As general manager of Mutual Gold Corporation and as a director I cannot accept cancellation of the contract to purchase Log Cabin Mine.

Mutual Gold Corporation has performed the contract on its part in every particular, and until now there has not been the slightest intimation that its performance was not satisfactory to the owners. I would thank you to specify the matters claimed to be defaults, and also the points of difference to which reference is made in your letter. Please promptly advise me.

Very truly yours,

J. A. VANCE

General Manager, Mutual  
Gold Corporation.”

We considered your statement not in accordance with the facts and, therefore, served a second notice of termination upon you in order to cure any possible technical defects in the previous notice.

Mr. Garbutt informed us that at the earnest solicitation of some of your directors and stockholders, he attempted to find parties who would help you in your financing and, failing in this, that he told you he would find \$10,000 for you with which to make the payment due November 1st so that you would have time to turn around and not be coerced into signing any contract unsatisfactory to you.

He informs us also that as a result of further negotiations he entered into a contract with you, designed as a stop-gap to enable you to proceed to do the things your contract with us called for until someone else could be found to help you; also that in accordance therewith you have assigned to him your interest in your agreement with us. However, we find that such assignment does not conform to the requirements of your agreement with us and before we take up any negotiations looking to a renewal of your contract we desire that you be represented by a duly authorized representative in addition to your assignee.

He also stated to you, so we are informed, that his connection with you would have no influence upon whether or not we rehabilitated your contract, and this is true.

Mr. Garbutt has approached us seeking a reinstatement of your contract which we have declined under all of the circumstances as stated by him, among which are that in hope of such reinstatement he has expended a considerable sum of money in building a power line to the property and for

other things designed to allow an early compliance with your terminated contract with us which money was advanced without our knowledge and was necessarily at his own risk.

Mr. Garbutt has also informed us of your own internal dissensions, and of the opposition in certain quarters to him and his contract, in all of which we have no direct concern.

In view of all of the circumstances we are relieving Mr. Garbutt of the responsibility of representing us and you will, in event you desire to communicate further, address us individually; Chandis Securities Company, Times Building, Los Angeles, attention of Harry Chandler, and Alice Clark Ryan, 112 South Orlando Street, Los Angeles.

We have a friendly feeling for Mr. Russell Collins through whom most of our business has been done and we have no desire to work a hardship upon your stockholders, many of whom we believe are in ignorance of the true conditions, but:

We are not satisfied with the way you have evaded carrying out your contract with us nor pleased with your Managing Director, Mr. Vance's uncandid statement to us that "you have complied with your contract in every particular", when you well know this is not true and, in view of the many concessions we have made you in the past we are not pleased by your concealment from us of developments at the mine; nor by the excuse of your manager's attorney that you had no contractual ob-



ligation to inform us; nor by his contention that our failure to take action sooner, constituted a waiver of the many breaches of your contract, and we are not at all reassured by your internal dissensions, nor by the threats of litigation amongst yourselves which it appears have been extended to covertly include us.

As long as this is possible or threatened, you may expect no consideration from us.

If our former contract could not be enforced for the reasons intimated, that is sufficient reason in itself for our reluctance to reinstate it.

However, we still do not desire to close the door against further negotiations and, as your time is short, we state our position as follows:

We consider your former contract as terminated and at an end. We are willing to enter into negotiations looking toward making a new one provided such negotiations are instituted at once and completed before November 1st, 1938.

We would expect such new contract, amongst other things, to provide full protection for us against such eventualities as led up to the termination of your former contract and against such threats as its termination brought forth as well as against happening which might impair our security.

We would be pleased to receive a statement of your position and your views on the subject and an intimation of the course you intend to pursue.

Also it may save time if you will designate a person to represent you in these negotiations.

Yours truly,

CHANDIS SECURITIES  
COMPANY

By HARRY CHANDLER

President

ALICE CLARK RYAN

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### PLAINTIFFS' EXHIBIT 30

#### Minutes of Special Meeting of Directors of Mutual Gold Corporation

Pursuant to due waiver of notice, a special meeting of the directors of Mutual Gold Corporation, a corporation, was held at 610 Colman Building in the City of Seattle, King County, Washington, on Friday, the 21st of October, 1938, there being present Mr. Stiegler, Mr. Ferbert, Mr. Hickcox and Mr. Grill. Mr. Collins was absent.

The meeting was called to order by Mr. Stiegler, the President, who presided.

The following resolutions were duly introduced, discussed and, upon a vote being had, unanimously adopted:

Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill, directors, be and they hereby are authorized and directed to go to California to negotiate with Mr. Garbutt with reference to cancellation of his contract, and for the negotiating with him to secure

the advances which he has made or may hereafter make as required by his contract, or negotiate for such other arrangements therefor as may be for the best interests of the company; and

Be It Further Resolved that Mr. G. H. Ferbert and Mr. W. L. Grill are hereby authorized and directed to arrange, if they deem it advisable, for the organization of a new corporation under the laws of California or any other state, with a par value of \$10,000, divided into 10,000 shares, or such other par value or number of shares as they might deem advisable, and to subscribe to said shares for and on behalf of the Mutual Gold Corporation.

Resolved, that in the event such corporation is organized, Mr. G. H. Ferbert and Mr. W. L. Grill be and they hereby are authorized and directed to arrange for the transfer of mining claims, contract and machinery from Frank A. Garbutt to said new corporation in connection with the termination of the said contract with Frank A. Garbutt, if the same shall be terminated.

Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill be and they hereby authorized to designate the temporary directors of such new corporation, if one be organized.

Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill be and they hereby are authorized and directed to negotiate for and on behalf of this company with Mr. Frank A. Garbutt for the obtaining of a new contract, if Mr. Frank A. Garbutt is desirous

of entering into a new contract after the termination of the present one, any and all of such terms to be wholly subject to the subsequent approval, confirmation and ratification of the board of directors.

Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill be and they hereby are authorized and directed to enter into negotiations for and on behalf of the company in connection with the existing contract of Mr. Frank A. Garbutt, and any new contract, if any, which he may desire to submit to Mutual Gold Corporation, which negotiations shall be completely subject to the approval, confirmation and ratification of the board of directors of the Mutual Gold Corporation.

Resolved, that Mr. G. H. Ferbert and Mr. W. L. Grill be and they are hereby authorized and directed to negotiate a loan in the sum of \$10,000 to pay for the subscription of \$10,000 to the new company, in the event that a new company is organized.

Mr. Grill thereupon suggested that a director be appointed to fill out the unexpired term of Mr. R. P. Woodworth, resigned, and Mr. A. P. Bowes was duly nominated and, upon a vote being had, elected as a director of the company, to fill out the said unexpired term of Mr. Woodworth, and to serve until the next regular annual meeting of the stockholders and until his successor is elected and shall qualify.

No further business coming before the directors, the meeting thereupon adjourned.

W. L. GRILL

Secretary Pro Tem

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PLAINTIFFS' EXHIBIT 32

is set forth in the Complaint, as Exhibit 10 thereto, at page 65.

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PLAINTIFFS' EXHIBIT 34

Minutes of Special Meeting of Directors of  
Mutual Gold Corporation

Pursuant to due waiver of notice and consent thereto, a special meeting of the directors of Mutual Gold Corporation, a corporation, was held on Monday, the 7th day of November, 1938, at 610 Colman Building in the city of Seattle, King County, Washington, there being present Mr. J. E. Stiegler, Mr. F. T. Hickcox, Mr. W. L. Grill and Mr. A. P. Bowes, constituting a majority of the directors of the company.

The meeting was called to order by the President, Mr. J. E. Stiegler, who presided.

Mr. Grill fully reported the results of his meeting with Mr. Garbutt in Los Angeles on October 31 and November 1 and 2.

Mr. Grill also reported that he and Mr. Ferbert had acknowledged receipt, on behalf of the Mutual Gold Corporation, of notice of withdrawal of the



company's contract of September 2 and September 22, 1938, with Mr. Frank A. Garbutt, and also the execution of an agreement with Mr. Garbutt by Mr. Grill and Mr. Ferbert, as directors and representatives of the Mutual Gold Corporation, dated November 1, 1938, subject to the ratification and approval of the board of directors.

The following resolution was duly introduced, discussed and upon a vote being had, unanimously adopted:

Resolved, that the execution of that certain contract read to the board, dated the first day of November, 1938, between Mutual Gold Corporation and Frank A. Garbutt, signed by W. L. Grill and G. H. Ferbert, as representatives and directors of the Mutual Gold Corporation, be and the same is hereby ratified, approved and confirmed as the contract of the Mutual Gold Corporation; and

Be It Further Resolved, that if for any reason the signatures of the said W. L. Grill and G. H. Ferbert are in any way insufficient, the President of this corporation, J. E. Stiegler, be and he hereby is authorized and directed to execute the said agreement as President of the corporation.

The following resolution was duly introduced, discussed and, upon a vote being had, unanimously adopted:

Resolved, that the President of this corporation be and he hereby is authorized and directed to execute a conditional sale contract covering the pur-



chase of certain mining machinery and equipment with the Western Machinery Company, which contract was read to the board.

No further business coming before the board, the meeting thereupon adjourned.

W. L. GRILL

Secretary pro tem.

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PLAINTIFFS' EXHIBIT 36  
MUTUAL GOLD CORPORATION

401 Fernwell Building  
Spokane, Washington

December 1, 1938.

Mutual Gold Corporation Stockholders:

Enclosed herewith please find Progress Report recently sent to the Board of Directors of Mutual Gold Corporation by Mr. Frank A. Garbutt.

It is the intention of the Board to send reports to the stockholders from time to time so that they may keep posted on the affairs of the Company.

Very truly yours,

MUTUAL GOLD CORPORATION

By J. E. STIEGLER

President.

Enc.

PLAINTIFFS' EXHIBIT 37

Minutes of Special Meeting of Directors of  
Mutual Gold Corporation

Pursuant to the consent of all directors of the company, a special meeting of the board of directors of Mutual Gold Corporation, a corporation, was held at 610 Colman Building in the city of Seattle, King County, Washington, on Monday, the 28th day of November, 1938, at the hour of 10 o'clock A. M., there being present a majority of the board of directors.

The meeting was called to order by the President, Mr. J. E. Stiegler, who presided.

The meeting considered the contracts presented by Mr. Garbutt and authorized Mr. W. L. Grill to prepare a contract as nearly along the lines of the old contract as possible, consistent with certain ideas Mr. Garbutt desired incorporated in it.

The meeting was thereupon adjourned to the 9th day of December, 1938, at the hour of 10 o'clock a. m., to meet at 610 Colman Building, Seattle, Washington.

W. L. GRILL

Secretary Pro Tem.

## PLAINTIFFS' EXHIBIT 38

Minutes of Adjourned Special Meeting of Directors  
of Mutual Gold Corporation

Pursuant to notice given at the special meeting of the directors of Mutual Gold Corporation held on the 28th day of November, 1938, which was adjourned to the 9th day of December, 1938, a special meeting of the directors of said Mutual Gold Corporation, a corporation, was held at 610 Colman Building, Seattle, King County, Washington, on Friday, the 9th day of December, 1938, at the hour of 10 o'clock a. m., there being present a majority of the directors of the company.

The meeting was called to order by Mr. Stiegler, the President, who presided.

Mr. Grill stated the progress that had been made in connection with the making of a new contract with Mr. Garbutt; he stated that he had drawn up a proposed contract and sent it to Mr. Garbutt, who apparently wanted some changes in it and was studying it.

It was duly moved, seconded and carried that the president and secretary of the company be authorized and directed to execute a request addressed to Mr. Frank A. Garbutt, requesting him to advance such monies as may be necessary to complete the pipe line, repair the mill, pay taxes, etc. in getting the property ready for operation, and that such advances will be covered by notes as provided in contract with Mr. Garbutt dated November 1, 1938.

No further business coming before the directors at this time, the meeting was adjourned until December 17, 1938, at 10 o'clock a. m.

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Secretary pro tem.

Approved:

J. E. STIEGLER

A. P. BOWES

Directors.

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### PLAINTIFFS' EXHIBIT 39

#### Minutes of Special Meeting of Directors of Mutual Gold Corporation

Pursuant to notice and consent, a special meeting of the directors of Mutual Gold Corporation, a corporation, was held at 610 Colman Building in the city of Seattle, King County, Washington, on Saturday, the 17th day of December, 1938, at the hour of 10:00 o'clock a. m., there being present at said meeting Messrs. J. E. Stiegler, F. T. Hiccox, W. L. Grill and A. P. Bowes.

The meeting was called to order by the President, Mr. Stiegler, who asked Mr. Grill to act as secretary of the meeting.

After discussing the affairs of the company, the following resolution was introduced, seconded and, upon a vote being had, unanimously adopted:

Whereas, this corporation has been negotiating for some few weeks with Mr. Frank A. Garbutt for

a contract along the lines of the contract made with him on or about September 2 and 22, 1938; and

Whereas, the terms of such contract have been practically agreed upon; and

Whereas, the form of such contract has been read to and studied by the board; and

Whereas, it will be for the best interests of this company that said contract be entered into; now, therefore,

Be It Resolved that this company enter into said contract with said Frank A. Garbutt, which contract has been fully read, discussed and studied by the board; and

Be It Further Resolved, that the president and secretary of this corporation be and they hereby are authorized and directed to execute said contract for and on behalf of this company, and to affix the seal of this company thereto.

Be It Further Resolved, that the President of this corporation be and he hereby is authorized and directed to deliver said contract to said Frank A. Garbutt and to Log Cabin Mines Company, a corporation.

Mr. Tom L. Wyckoff was thereupon duly nominated to serve as director of the company, to fill out the unexpired term of Mr. J. A. Vance, resigned, and to serve until the next regular annual meeting of the stockholders of the company and until his successor shall be elected and shall qualify. Upon a vote, Mr. Wyckoff was unanimously elected such director.



No further business coming before the directors, the meeting thereupon adjourned.

W. L. GRILL  
Secretary pro tem.

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PLAINTIFFS' EXHIBIT 40

is set forth in the Complaint, as Exhibit 11 thereto, at page 69

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PLAINTIFFS' EXHIBIT 41

Minutes of the Fourth Meeting of the Board of  
Directors of Log Cabin Mines Company

On January 4, 1939, at 12:00 o'clock noon, the fourth meeting of the board of directors of the Log Cabin Mines Company was held at 411 West Seventh Street, Los Angeles, California, Room 712. Directors S. C. Hall, Chas. F. Hathaway, G. H. Ferbert, and Russell F. Collins were present. Director William L. Grill was absent, but the secretary had received from him a telegram which read as follows:

January 4, 1939

You Have My Permission Hold Meeting Log  
Cabin Approve Contract and Other Matters in  
Connection With Contract.

W. L. GRILL.

The meeting was called to order by Mr. S. C. Hall, president, who stated that the purpose of the meet-

ing was to consider whether the corporation should execute a certain contract that had been prepared under date of December 17, 1938, in which Mutual Gold Corporation was the first party, Frank A. Garbutt was the second party, and Log Cabin Mines Company was the third party. Mr. Hall further stated that as he understood it, the proposed contract was intended to accomplish substantially the results aimed at in a contract dated September 2, 1938, and a contract dated September 22, 1938, between Mutual Gold Corporation as the first party and Frank A. Garbutt as the second party, which contracts had been terminated by the mutual consent of the parties thereto on or about November 1, 1938. After extended discussion, it was, on motion of Mr. Ferbert seconded by Mr. Collins and carried by the affirmative vote of all directors present,

Resolved that the president and the secretary of this corporation be, and they are hereby, authorized, empowered, and directed to execute and deliver on behalf of this corporation that certain contract bearing date December 17, 1938, in which Mutual Gold Corporation is the first party, and Frank A. Garbutt is the second party, and this corporation is the third party, which said contract has already been executed by the Mutual Gold Corporation.

Mr. Collins then tendered the following written resignation:

Mr. S. C. Hall, President,  
Log Cabin Mines Company,  
Los Angeles, California.

Dear Mr. Hall:

I hereby tender my resignation as a director of Log Cabin Mines Company to take effect immediately.

(s) RUSSELL F. COLLINS

On motion made by Mr. Ferbert, seconded by Mr. Hathaway, and approved by the affirmative vote of all directors present, the resignation was accepted.

Mr. Ferbert then nominated Mr. A. R. Carter, formerly a director, to fill the vacancy on the board made by Mr. Collins' resignation. Mr. Hathaway seconded the nomination. No other nominations being made, the nominations were closed on motion of Mr. Hathaway, seconded by Mr. Ferbert, and carried by the unanimous vote of all the directors present. The question of Mr. Carter's election then being put before the board, he was unanimously chosen.

There being no other matters to come before the meeting it was adjourned by affirmative vote of all directors present on motion made by Mr. Ferbert and seconded by Mr. Hathaway.

CHAS. F. HATHAWAY

Secretary.

We the undersigned, being all the board of directors of Log Cabin Mines Company at the time the meeting referred to in the foregoing minutes was

called to order, do hereby waive notice of the time and place of the meeting of said board held at 12:00 o'clock noon on January 4, 1939 at 411 West Seventh Street, Los Angeles, California, in Room 712; and we hereby approve the foregoing minutes of the proceedings had at said meeting.

Dated, January 4, 1939 S. C. HALL

Dated, January 4, 1939 CHAS. F. HATHAWAY

Dated, January 4, 1939 G. H. FERBERT

Dated, January 4, 1939 RUSSELL F. COLLINS

Dated, January 5, 1939 WILLIAM L. GRILL

I, the undersigned, being the person who was elected to the board of directors of Log Cabin Mines Company at the meeting referred to in the foregoing minutes, do hereby waive notice of the time and place of said meeting held at 12:00 o'clock noon on January 4, 1939 at 411 West Seventh Street, Los Angeles, California, in Room 712; and I do hereby approve the foregoing minutes of the proceedings had at said meeting.

Dated. January 4, 1939.

A. C. CARTER.

PLAINTIFFS' EXHIBIT 42

FRANK A. GARBUTT

Suite 712 - 411 West Seventh Street  
Los Angeles, Cal.

To the Board of Directors, Mutual Gold  
Corporation,  
Mr. J. E. Stiegler, President.

Progress Report

My last report was made to you November 22, 1938, Since then, however, your Board of Directors has been kept in close touch with all operations by means of daily air mail letters to your President at Naches; your director, Mr. Grill, at Seattle; and your Director, Mr. Ferbert, at Long Beach, together with copies of much of the routine correspondence involved.

Director Russell Collins has kept in close touch by personal contact, so that your Board has been fully informed at all times and has been consulted in advance of any work contemplated and their advice sought and carefully considered.

I feel, and I think you agree that your Board of Directors are functioning one hundred per cent in controlling and conducting your Company's affairs, being enabled to do so intelligently by the completeness and promptness with which all information reaches them.

It pleases me to state that the Company's business as far as I can see, is gradually getting into a bet-

ter and sounder condition and, although there are innumerable things to do to protect your titles and develop your property that they are being given proper attention as expeditiously as opportunity affords.

Among other things referred to are :

Your Relationship With the Owners. Although you made your last payment promptly you are still in default as to many material things, some of which, as, for example, failure to impound your tailings can not be corrected. While not waiving these various defaults the owners have shown a disposition to be lenient and, although I can not guarantee it, am hopeful that we will have no serious trouble with such matters, this particular one being dependent upon what damage may occur to parties owning property below us.

Titles to Your Holdings. It is important that some of your claims should be patented without further delays. This is being studied. It is to some extent dependent upon the weather as survey by the U. S. Deputy Surveyors are amongst the necessary steps. There are also some matters of policy to be considered.

The title to your water is going to be questioned and the legalities involved are being carefully examined into. We have obtained copies of the briefs from the attorneys who tried some of the City's cases who were my attorneys for over twenty years and the law and the facts are being briefed for our protection.



Road Development. For twenty-five years the operators of this property, including ourselves, have been wasting money in hauling over and attempting to maintain impossible roads and prohibitive grades.

I am not discussing here the developing of the Mine itself nor the planning of a proper process nor the building of a suitable mill. These subjects are too complicated to be determined finally with our present knowledge.

As you know, they are being studied intensively and work is being expedited as rapidly as business prudence and good judgment will permit. You are completely familiar with all of the considerations governing this but it is appropriate to say that I am not displeased with the progress made with our metallurgical and physical problems.

Before a study of these matters can be completed it will be necessary to operate the property and ascertain a great many things not now known in order to secure the best approximate results both in operation and in initial expenditure. This work is receiving my best attention as you are completely aware. We have tied ourselves to no one engineering firm but are consulting the best technical and operating skill in the United States and in the final analysis will be governed by our own knowledge and not by any individual opinion for, while our operations are small, they are vital to us and we can not afford to take any chances.

Now as to details to date:

1. Our power line, as previously reported, is complete, as is also another power line 1,500 feet

long, with butt-treated poles to serve the four pumps for our tailing disposal line.

2. A transformer of our own for electric lighting and a lighting system have been installed to replace the inadequate and expensive contraption we had.

3. We have completed the installation of a tailings line about 2600 feet long to the Federal Site and built a dam there; thus affording a safe place for the disposal of our tailings and insuring a future compliance with this provision of our contract. While this operation will be temporarily troublesome and expensive it is the only possible procedure that is entirely safe that is open to us under present conditions.

4. The 2,800-foot, 8-inch pipe line from the drain tunnel to "the sink" for the disposal of our "red" mine water has been completed and insofar as possible, protected. Its upper end is 16-inch. Mr. Sturgeon came well within his estimate on the cost of this installation.

5. Considerable trenching has been completed on the hill side to protect the drainage tunnel from continued damage by surface water and, in Mr. Collins' opinion, to minimize the chance of liability from the unimpounded tailings. I have no worthwhile opinion on this.

6. The installation of the electric hoist is completed and my advice is that it is operating satisfactorily.

7. The cage is also operating satisfactorily in the shaft.

8. New mine cars are on hand.

9. The compressor is complete.

10. We are placing the one-inch compressed air line throughout the mine with 2-inch galvanized pipe.

11. The old stamp mill has been completely overhauled. It is ready to run. I expect trouble with it, especially its ore elevating system which was so impossible before.

If this mill stands up, I have a plan for utilizing it for secondary crushing in the future which will salvage a part of its cost, in which case it will be further remodeled in the spring. Nothing but a trial can determine this.

12. Compressor and Hoist house is complete.

13. Heaters, as before reported, are installed.

14. All payrolls have, of course, been met promptly.

15. An intensive study of our metallurgical and operating problems has been and is being made and I am pleased to report substantial progress and the accumulation of much reliable information.

16. Preliminary surveys have been made by competent engineers of new roads, and their feasibility at a reasonable cost is assured. The construction, however, must await spring and the thawing of the ground. Possibly \$2,500 or \$3,000 will cover this cost.

17. We have been favored so far by a very open winter. We can not haul in the daytime but can haul at night when the ground is frozen.

18. Last week we put about 60,000 feet of mine timbers on the hill.

19. New jack hammers have been bought and received.

20. I have bought and delivered to the mine supplies consisting of fuel oil, coal, carbide, steel, track, provisions, drills, explosives, equipment, etc., and barring accidents and after the usual adjustments we are ready to run and I am very much in hope we will be able to run throughout the winter. In fact, I expect it. This will enable us to gain much needed information.

We have spent \$50,253.87 to date and I do not believe \$500 of this has been wasted. On the other hand I have saved the Company more than ten times this amount that I know of by close personal attention to detail. Of this amount \$10,000 was for your payment to the owners; \$11,000 for payment for your major power line; \$7,220.72 for consumable supplies for winter operations, and \$14,274.37 for equipment such as compressor, hoist, pipe lines, auxiliary power line, mill motors, lighting plant, mine cars, new jackhammers, electric wiring, etc.

In concluding allow me to thank you gentlemen for your splendid cooperation and understanding. Your suggestions and advice have been timely and excellent and it is a pleasure to work with people who are familiar with the situation and who do not think that all you have to do is to buy something called a mill and start paying dividends.

The landscape is dotted with that kind of mills that never earn a dividend.

I wish you could find some way of acquainting your stockholders with the conditions, what you have accomplished and what you have gone through in the past for their sake. A few words on paper cannot begin to tell this story.

The devotion of Russell Collins to the interests of the Mutual is touching in the extreme. I know that he has gone hungry and cold in his endeavors to pull them out of the hole they had, through no fault of his, gotten into.

Your President and also Director Ferbert have shown a willingness to sacrifice not only their time but also their money to benefit the stockholders and this, may I state, is in such marked contrast to the usual corporation director who is generally concerned only in protecting his own interests that it has furnished the inspiration and the incentive to me to carry on at a time when the association promised to become an unpleasant one.

Nor can I close without paying tribute to the faithful cooperation of our men at the mine and especially our underground man, Mr. Sturgeon, and our mill man, Mr. Haley. They have worked hard and faithfully for the Company and it is due to their devoted efforts that we are able to run this winter.

For example, our eight-inch pipe line was finished, well under Mr. Sturgeon's estimate of cost, on a day



when six inches of snow was blown off of the mountain by a howling blizzard.

They have given me at all times faithful cooperation even when perhaps they did not agree with what I was doing and I can depend on them to voice their independent opinions and then do their best to prove that they were wrong if I over-rule them. More than this, no manager can ask of any head of a department.

We all know the irreparable loss that the death of Mr. Keily was to the enterprise and to all of us.

While he had not been with me for several years on account of my retirement from mining, he has been in my employ without missing a pay day for 17½ years during which time he never received less than \$300 per month and expenses.

Mr. Keily was a mining engineer of unusual ability in addition to being a practical miner and it was with a heavy heart that I consented to go on with you when he passed away for I had no hallucinations about the trouble and detail involved.

That with your cooperation this work bids fair to become more of a pleasure than a burden is the highest compliment I can pay you and I am endeavoring to so arrange your affairs that if anything happens to me that you would not be adversely affected.

In conclusion, may I sum up by saying that with economical and disinterested management and by building up an efficient and loyal organization we



have a fair chance of success. You may depend upon my best endeavors.

I have heard of efforts being made by unknown parties to buy stock cheap. I wish you could find some way to advise your stockholders to hold on to their stock. My interests are not for sale.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

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PLAINTIFFS' EXHIBIT 43

Mutual Gold Corporation  
401 Fernwell Building  
Spokane, Washington

January 14, 1939

To the Stockholders of Mutual Gold Corporation:

You will find enclosed herewith notice of Annual Meeting of the stockholders of the company, to be held on the date fixed by the by-laws.

You will also find enclosed herewith latest progress report of Mr. Frank A. Garbutt. You will note from this that Mr. Garbutt has expended \$50,253.87, up to January 8, all of which expenditures were necessary before the property could be put in operation.

The drain tunnel to the sink and the installation of the tailings line were necessary to keep the water and the tailings out of the creek which runs through Mrs. Cunningham's property. An effort was made

by Mr. Garbutt to make a satisfactory arrangement with Mrs. Cunningham to use the creek for water and tailings disposal, but without success. During a period of prior management a disposal line from the mouth of the drain tunnel to the sink was constructed at a considerable expense, but it was not properly constructed, thus necessitating a new installation. The new installation is now constructed at a proper grade and should cause no further trouble to the company.

The mine was ready to commence operations several days ago, but at the last minute it was found that the water pipe leading to the property was frozen at some point and the getting of this line in operation occasioned some delay. However, the mill began operating on January 12, 1939.

Mr. Garbutt has kept the directors fully informed of what is transpiring at the property, and has outlined to them from time to time for their approval the work which he is undertaking. This is something which has never occurred before. Mr. Garbutt is also making a study of the ore and the property, so as to determine the proper equipment for obtaining the best recoveries from the ore. He is doing this in a very thorough manner and I have no doubt that when he finally recommends what equipment should be placed upon the property for this purpose, it will be successful.

It has been a real pleasure to the writer, and I feel also to the board, to have a man in charge of

the operation who not only knows what he is doing, but who does not hesitate to do it when he finds out what should be done. Mr. Garbutt realizes better than anyone else that the property will have to have the most economical kind of operation to be successful, and you may rest assured that it will have just that kind of operation. He was severely handicapped owing to the shortness of time which he had to attempt to get the property in operation this year. I may also frankly say in this connection that I doubt very much if we could have found another person in the United States as well qualified in every respect to handle this property.

As you are doubtless aware, a number of months this year were lost, during which the board was considering the offer of the Vance interests and the one made by Mr. Garbutt. After long delay and much opposition, the board finally concluded that it would be for the best interests of all the stockholders to accept Mr. Garbutt's offer, which was reduced to a contract. This contract was more than lived up to by Mr. Garbutt. For various reasons, however, he desired to terminate the contract and a new one has been prepared which has met the approval of the board but has not yet been executed and delivered to the company by Mr. Garbutt. We should have some word on it before the stockholders' meeting.

The company has a serious controversy with Mr. Vance. When the deal with Mr. Garbutt was closed,

Mr. Vance insisted upon the immediate payment of the production notes, as well as certain advances which he claims to have made on the company's behalf. Of course it was impossible to make any immediate settlement. He later modified his demands and insisted upon said advances being repaid within one year and the production notes at a later date. No settlement could be made along this line until the company knew when it might have sufficient resources to take care of any settlement which it might make. If such a settlement were made and the company unable to meet the obligations when they fell due, then the interests of the stockholders would be completely wiped out, and this is what the directors are desirous of avoiding. Whenever Mr. Vance is willing to make an arrangement which will not jeopardize the interests of the stockholders, the present board of directors will meet him more than half way.

You will find enclosed herewith a proxy, which is self-explanatory. If you desire to continue the present management of the company's affairs and the present board, which has and will work for the best interests of all of the stockholders, kindly sign the enclosed proxy and return to the office of the company. If, on the other hand, you feel that the present board has not worked unselfishly and for your best interests, do not hesitate to vote for anyone you desire, because we are all working for one end, and that is to make the property and the company a success.

You may be informed prior to the stockholders' meeting that many things may occur detrimental to your interests because of the arrangement made with Mr. Garbutt. In this connection please bear in mind that certain statements were made to some of you at the time the contract was first entered into as to what would happen if the contract was made. Certainly none of these things has happened and you are now in a position to judge performance against any assertions of what may occur in the future.

It is the writer's personal opinion, in conclusion, that the stockholders will be highly satisfied with Mr. Garbutt's operation during the coming year and that they may expect a fair and square deal from him.

Yours sincerely,  
MUTUAL GOLD CORPORATION,  
By J. E. STIEGLER,  
President.

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PLAINTIFFS' EXHIBIT 44

MINUTES OF THE FIFTH MEETING OF  
THE BOARD OF DIRECTORS OF LOG  
CABIN MINES COMPANY

On March 6, 1939, at 11:00 o'clock a. m., the fifth meeting of the board of directors of the Log Cabin Mines Company was held at 411 West Seventh Street, Los Angeles, California, Room 712. Direc-



tors S. C. Hall, Charles F. Hathaway, G. H. Ferbert, and A. R. Carter were present. Director William L. Grill was absent.

The meeting was called to order by S. C. Hall, president, who stated that the purpose of the meeting was to determine whether to exercise the option the corporation had to purchase the Clark-Ryan-Collins contract of July 13, 1932, now held by the Mutual Gold Mining Corporation, together with the other property of said Mutual Gold Mining Corporation, all of which, pursuant to the terms of the contract of December 17, 1938, executed by the Mutual Gold Corporation, Mr. Frank A. Garbutt, and this corporation, had been transferred to Mr. Garbutt as trustee. After discussion, the following resolution was proposed by Mr. Carter, seconded by Mr. Hathaway, and adopted unanimously:

“Resolved that the president and the secretary of this corporation be, and they are hereby, authorized, empowered and directed to exercise the option given in that contract dated December 17, 1938 executed by Mutual Gold Corporation, Frank A. Garbutt, and this corporation, to purchase for the sum of \$10.00 the following properties:

a. All the personal property belonging to Mutual Gold Corporation and located at the Log Cabin Mines in Mono County, near Leevining, California, which property is described in a bill of sale given by Mutual Gold Corporation to Frank A. Garbutt under date of September 22, 1938 and recorded on



November 7, 1938 in Book 14, at page 322, Official Records of said Mono County.

b. All the real property interest, if any, belonging to said Mutual Gold Corporation in Mono County, California, which interest is described in that certain mining deed given by said Mutual Gold Corporation to Frank A. Garbutt under date of September 21, 1938 and recorded on November 7, 1938 in Book 14, at page 321, Official Records of said Mono County.

c. That contract dated July 13, 1932 (and the modifications thereof) to sell the Log Cabin group of mines near Leevining in said Mono County, which contract was executed by M. N. Clark, Alice Clark Ryan, and Chandis Securities Company as vendors and by Russell F. Collins and Ben L. Collins as vendees, and was heretofore sold and assigned by said Russell F. Collins and Ben L. Collins to said Mutual Gold Corporation.

Mr. Hall then called attention to the fact that the escrow ordered by the Commissioner of Corporations had not been terminated, and suggested that it might be well while the board was in session to adopt a resolution authorizing the officers to make application to the commissioner for termination of said escrow at the proper time. On motion of Mr. Hathaway, seconded by Mr. Ferbert, the following resolution was unanimously adopted:

Resolved that the president and the secretary of this corporation be, and they are hereby authorized,

empowered, and directed to make application, at such time as in their discretion may seem proper, to the Commissioner of Corporations for the State of California to terminate the escrow which, in the permit granted by him to this corporation on October 21, 1938 to sell stock, he ordered to be opened.

There being no further matters to come before the meeting, it was adjourned by the affirmative vote of all directors present on motion made by Mr. Carter and seconded by Mr. Hathaway.

CHAS. F. HATHAWAY

Secretary

We, the undersigned, being all the board of directors of Log Cabin Mines Company at the time the meeting referred to in the foregoing meeting was held, do hereby waive notice of the time and place of said meeting; and we hereby approve the foregoing minutes of the proceedings had at said meeting.

Dated, March 6, 1939

S. C. HALL

Dated, March 6, 1939

CHAS. F. HATHAWAY

Dated, March 6, 1939

G. H. FERBERT

Dated, March 6, 1939

A. R. CARTER

Dated, March 7, 1939

WILLIAM L. GRILL

PLAINTIFFS' EXHIBIT 45

is set forth in the Complaint, as Exhibit 12 thereto,  
at page 84.

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PLAINTIFFS' EXHIBIT 46

is set forth in the Complaint, as Exhibit 13 thereto,  
at page 88.

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PLAINTIFFS' EXHIBIT 47

is set forth in the Complaint, as Exhibit 14 thereto,  
at page 92.

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Mr. Anderson: That is Plaintiffs' Exhibit 51.

I offer in evidence mining deed dated August 9,  
1939, from Mutual Gold Corporation to Log Cabin  
Mines Company, [50] covering the so-called omitted  
mining claims.

The Clerk: 52.

Mr. Anderson: It is

PLAINTIFFS' EXHIBIT 52. [51]

set forth in the complaint as Exhibit 15 thereto,  
at page 94.

## PLAINTIFFS' EXHIBIT 60

SCHEDULE OF DIRECTORS AND OFFICERS  
OF LOG CABIN MINES COMPANY

N. B. Red ink underlining indicates directors or officers who were at the same time directors or officers of Mutual Gold Corporation.)

[Printer's Note: Red ink underlining is indicated by italics.]

Meeting of October 19, 1938:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter

George H. Blake

Frederick J. Ott

Officers (elected at this meeting):

President—S. C. Hall

Vice president—Charles F. Hathaway

Secretary-Treasurer—A. R. Carter

Ass't Secretary—George H. Blake

Ass't Treasurer—Frederick J. Ott

Meeting of October 26, 1938:

Directors:

Same as on October 19, 1938

Officers:

Same as on October 19, 1938

Meeting of November 2, 1938:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter (resigned at this meeting)

*Russell F. Collins* (elected in place of  
Carter)

George H. Blake (resigned at this meeting)

*William J. Grill* (elected in place of  
Blake)

Frederick J. Ott (resigned at this meeting)

*G. H. Ferbert* (elected in place of Ott)

Officers:

President—S. C. Hall

Vice president—Charles F. Hathaway (re-  
signed at this meeting)

Secretary-Treasurer—A. R. Carter (re-  
signed at this meeting)

Charles F. Hathaway (elected in place  
of Carter)

Ass't Secretary—George H. Blake (re-  
signed at this meeting)

*William L. Grill* (elected in place of  
Blake)

Ass't Treasurer—Frederick J. Ott (re-  
signed at this meeting)

## Meeting of January 4, 1939:

## Directors:

Charles F. Hathaway

S. C. Hall

*G. H. Ferbert**Russell F. Collins* (resigned at this meeting)

A. R. Carter (elected in place of Collins)

*William L. Grill*

## Officers:

President—S. C. Hall

Vice president—Vacant

Secretary-Treasurer—Charles F. Hathaway

Ass't Secretary—*William L. Grill*

Ass't Treasurer—Vacant

## Meeting of March 6, 1939:

## Directors:

Charles F. Hathaway

S. C. Hall

*G. H. Ferbert*

A. R. Carter

*William L. Grill*

## Officers:

Same as on January 4, 1939.



Meeting of April 13, 1939:

Directors:

Charles F. Hathaway

S. C. Hall

*G. H. Ferbert*

A. R. Carter

*William L. Grill* (resigned at this meeting  
—vacancy not filled)

Officers:

Same as on January 4, 1939.

Meeting of April 17, 1939:

Directors:

Same as on April 13, 1939.

Officers:

Same as on January 4, 1939.

Meeting of April 27, 1939:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter

*G. H. Ferbert* (resigned at this meeting—  
vacancy not filled)

Officers:

Same as on January 4, 1939

Meeting of May 26, 1939:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter

Officers:

Same as on January 4, 1939.

Meeting of August 23, 1939:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter

Frederick J. Ott (elected at this meeting)

Officers:

Same as on January 4, 1939.

Meeting of October 20, 1939:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter

Frederick J. Ott

Frank A. Garbutt (elected at this meeting)

Officers:

Same as on January 4, 1939.

Meeting of January 15, 1940:

Directors:

Charles F. Hathaway

S. C. Hall

A. R. Carter (resigned at this meeting)

Frederick J. Ott (resigned at this meeting)

Frank A. Garbutt

*William L. Grill* (elected at this meeting)

*G. H. Ferbert* (elected at this meeting)

Officers:

Same as on January 4, 1939.

PLAINTIFFS' EXHIBIT 62

Frank A. Garbutt

Suite 712—411 West Seventh Street

Los Angeles, California

Nov. 5, 1938.

Mr. M. F. Haley,  
Log Cabin Mine,  
Leevining, Cal.

Dear Mr. Haley:

I have your letter of November 1, enclosing the two orders, signed by you and Mr. Sturgeon, for which I thank you.

It is not always possible or even desirable to explain to you why I give a positive order. When I do so you may be certain that I had a good and sufficient reason therefor and that I want it obeyed.

In this case I do not blame you for not understanding the matter but there are certain legal significances connected therewith that there is no reason why I should explain.

I will say this much, however, that at the time I issued this order I was carrying on these operations in my own name and that to have done otherwise would have made me liable for any damage the Mutual might have caused in the past or may cause in the future, an obligation which I would not undertake.

In addition to the above, in my opinion and in the opinion of the Mutual's attorney, such action not only protected me but did not weaken their position.

This is more, I believe, than I should say under the circumstances but I want to lessen some of your fears.

I have turned the property back to the Mutual and it is free to do what it sees fit.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

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Mr. Anderson: If your Honor please, I desire to read the testimony of Robert J. Cole who signed the report just introduced in evidence as Plaintiffs' Exhibit 64, which testimony was given in the [69] case heretofore referred to: Vance, et al. v. Mutual Gold Corporation, and Vance vs. Mutual Gold Corporation.

The Court: May I ask the purpose?

Mr. Anderson: The purpose of this is to supplement and sustain this report, this report being an exhibit in this case; and also to show evidence as to the values of this property. We have alleged that we——

The Court: Do counsel stipulate? Is that part of the stipulation that the witnesses' testimony in the Washington case may be read here the same as if they were present?

Mr. Hinckle: Yes, your Honor.

Mr. Anderson: That was covered in the stipulation that I addressed to your Honor this morning.

The Court: I just wondered.

Mr. Anderson: (Reading)

“ROBERT J. COLE,

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:” [70]

Mr. Moore: Q. You explained certain ores were developed, that is, certain reserves had been exposed? A. Yes.

Q. And you testified as to the amount of those reserves, didn't you? A. I think I did.

Q. In your opinion as a mining engineer and experience you have related you have had, state whether or not, in your judgment, those reserves could have been milled and the ore extracted at a profit with the equipment then at the mine?

A. With the equipment then at the mine I doubt whether they could have been treated at a profit.

[106-7]

#### Cross Examination

By Mr. Heil: [108]

Q. As I understand your testimony, you do not recommend the continuation of the operation of that property with the mill that was there? A. No.

Q. And in order to operate it profitably would you say that an expenditure of between \$100,000 and \$150,000 might be required?

A. It could have been that much, depending on conditions, as to how you wanted to spend your money.

Q. It would depend on whether you bought new or used equipment? [112]

RUSSELL F. COLLINS,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Russell F. Collins.

Direct Examination [137]

Q. You are familiar with the contract of September 2, 1938 involved in this lawsuit, are you not?

A. I think so; yes.

Q. Were you present when it was signed?

A. 1938. Well, my recollection is that I was present when it was signed.

Q. Where was it signed?

A. My memory don't carry me back to the exact location or place where it was signed, now, Mr. Abel.

Q. Were you present—you are familiar with—

A. Let me get that date straight. Hold on. That is in September, 1938?

Q. September 2, 1938.

The Court: That is the first contract involved.

Mr. Abel: The first contract involved in this lawsuit.

A. I think it was in Mr. Garbutt's office, if I am not mistaken.

Q. Who was present at that time?

A. Now, I don't—

Q. If that was the place?

A. I couldn't be positive, but my recollection is that Mr. Grill and Mr. Ferbert, I think, and I believe Mr. Stiegler. I am not sure but there were



(Testimony of Russell F. Collins.)

some others—and [138] I think Mr. Garbutt. I am not sure whether Mr. Garbutt was there or not. I would not be sure as to that.

Q. Are you familiar with the duplicate contract of September 22, 1938, being a duplicate of the contract of September 2, 1938?

A. A duplicate or a supplement or supplementary—

Q. It was the same contract bearing a later date, was it not?           A. Well, it probably was.

Q. Were you present when that instrument was signed?

A. Now I wouldn't be sure as to that. I went to the mine and I wouldn't be right sure as to that second date referred to.

Q. You went to the mine from what place?

A. From Los Angeles.

Q. When did you enter the service of the defendant Garbutt in connection with the matter under consideration here?           A. Well,— [139]

Q. By Mr. Abel: I am speaking of your initial service.

A. Well, there was a transition period there in which Mr. Garbutt was, I would say, a trustee or acting in the capacity of a trusteeship, and I was not out of the employ, as I understood it at least, of the Mutual Gold interests at any time.

Q. You are shown a check for \$50 bearing the signature "Frank A. Garbutt", dated September

(Testimony of Russell F. Collins.)

27, 1938. Do you identify that as a check that you received from him about that date?

A. That bears my signature and I am sure that is a check that I received from him. Yes.

Q. When did you receive it?

A. Well, my recollection is that I didn't have money to go to Leevining and so Mr. Garbutt was advised of that and gave me a check to bear my expenses. I had already spent all the money that I could raise from the other sources.

Q. Just be responsive. A. All right.

Q. I am just trying to find out when you received it. A. All right.

Q. Do you recall the circumstances under which you [140] received it?

A. Well, that is my recollection of it, that I was needing some money to go to the mine. That is my recollection, that I used that check in paying my expenses from here to Leevining and after I got there for a while.

Q. Then, the issuance of that check to you and your collection of that amount, \$50, preceded your employment by Mr. Garbutt in connection with this mining property?

A. Well, if you mean to say that that was prior to the final taking over by the Log Cabin; yes.

Q. No. It was before you had rendered any service for Mr. Garbutt that this \$50 was paid you? That is the point that I inquire about.

(Testimony of **Russell F. Collins.**)

A. Well, I wasn't—I was not considering myself in the position of his employee necessarily. I was more looking after the Mutual Gold and I had no money to go ahead on.

Q. Are you now able to state the date that you were first employed by the defendant Garbutt to render any service in connection with this mining property?

A. I couldn't tell you the exact date; no.

Q. You would not say that it was before or after September 27th?

A. No; I wouldn't. No; I wouldn't.

Q. Could it have been as much as a month earlier?

A. Well, I think not, because I think I was on a contract for myself, hauling supplies to the camp at that time. [141]

Q. At what time? A. At prior to that time.

Q. What time were you hauling supplies before that time?

A. Well, I hauled the pipe, the long 2200 feet of pipe on a contract.

Q. When, when?

A. For the Mutual Gold, and that may be one of the part payments on that. I wouldn't be sure about that. I hauled them—it was in the fall of 1938.

Q. Do you then testify that this \$50 payment had connection with the hauling of pipe?

A. I didn't say that.

(Testimony of Russell F. Collins.)

Q. Well, but what do you say?

A. I said I was not sure; that it may be. I remember Mr. Garbutt paid us for hauling this pipe on the contract, and that \$50 might be a part of that. I wouldn't be sure.

Q. I show you now another paper—and let me say that these were produced at our request by Mr. Garbutt's attorney—I show you a paper dated November 21, 1938. Please state whether that refreshes your recollection about the hauling of pipe as having occurred long after September 27th.

A. Who signed this? I don't see anything about who signed it. "I gave Mr. Collins \$50"——

Q. "55" this refers to.

A. That is what it says "\$55 last night on account of the hauling he is doing for us. I got \$25 of it from Mr. Garbutt"—— [142]

Q. "From Miss Garbutt."

A. "From Miss Garbutt and the balance was my cash. I have to give her back her \$25 and I ought to have about \$10 in cash to put in my pocket."

Q. "T. H. E." that would be Mr. Garbutt's——

A. As I remember that now——

Q. No. Just a minute, Mr. Collins. I don't wish to be unfair to you and make you testify to the correctness of some other person's memorandum; but by looking at this memorandum does it refresh your recollection about when you hauled, about when you did the hauling?

(Testimony of Russell F. Collins.)

A. Yes; I am sure that it does. That is in September, about——

Q. This bears date November 21 and calls attention to another check "16,812". I don't know whether that is here or not.

A. That is possible, or that is a part—as I remember, there was no bank open on that day. It was a Sunday and I was to leave town, and I am not sure that that was the second trip to Leevining or the third trip.

Q. I am only interested now in two things, dates and the hauling. Do you still think that the hauling that you did was in September or earlier which may account for the \$50 payment to you?

A. I remember very well that I was afraid the snow would come and maybe block the road before we could get this pipe [143] in and up the mountain. I remember that very definitely and I wouldn't positively say whether it was earlier. I remember it was bitterly cold. We slept out one night on the Ridge and it was pretty cold.

Q. Without going into too much detail, I am only interested in who you did that hauling for, whether it was for Mr. Garbutt or whether it was for Mutual?

A. Well, I would say that that was for Mutual Gold.

Q. As late as November, then, you were hauling for Mutual Gold, were you?

(Testimony of Russell F. Collins.)

A. Well, under that set-up; yes.

Q. Under that set-up?

A. That is my understanding; yes.

Q. Who did you have that understanding with?

A. Well, I was acting as a contractor and Mr. Garbutt had ordered the pipe and I took a contract to haul it.

Q. Well, when we find the date Mr. Garbutt ordered the pipe, it was after that you took the contract to haul it, was it, and were you paid for it?

A. Well, I guess it was after he had ordered it I took the contract on it.

Q. You are now shown a yellow sheet, being the third sheet here. Did that ever come to your attention before?

A. Well, that is September 30, 1938.

Q. Did you cause that payroll sheet to be prepared?

A. I don't remember ever having caused it to be prepared; [144] no.

Q. Well, do you identify that as showing money that you received from Mr. Garbutt for services in September?

A. Well, that could easily be. As I say——

Q. Did you receive a check of \$19.25 for services in September for five days' work?

A. I don't remember. I might have. It might have been the time——

Q. Anyway, that \$19.25 was not embraced in the \$50? A. No; I don't think so. No.



(Testimony of Russell F. Collins.)

Q. So, then, is it fair to state that you received two checks from Mr. Garbutt for services, the receipt of which was in September, irrespective of when the services were performed, one September 27th, \$50, and one \$19.25, paid October 6th, for wages in September?

A. Well, that could easily be; yes.

Q. And are you now prepared to concede that the hauling of the pipe was at a later date?

A. Well, it might have been. As I say, I remember the fear that the winter would close the road on us, and I knew we couldn't operate unless we got that pipe in and laid down. [145]

Q. By Mr. Abel: You are now shown page five of the bill of particulars in this case and your attention is directed to several items, all except the one "miscellaneous expenses \$150." Please state whether or not on or about the day or the days shown in the memorandum you received from Mr. Garbutt the amounts specified opposite each date.

Mr. Hinckle: We will stipulate that he did.

Mr. Abel: Yes, thank you. I won't bother you any more.

The Witness: That is all right.

Q. How long were you in the employ of Mr. Garbutt while you recognized him as trustee for Mutual Gold Corporation?

A. Well, I will say from the time I finished the haul and after going to Leevining up until the

(Testimony of Russell F. Collins.)

time the final transfers were made of the Mutual Gold to Log Cabin, and the taking over by the Log Cabin of their interests. That is the [146] time I was—

Q. Do you know what date that was?

A. I don't remember the exact date; no.

Q. At the time you received the check for \$50 you were a director of Mutual Gold Corporation, were you not?      A. I think I was.

Q. You know it, don't you?

A. Well, yes.

Q. You know you were?      A. Yes.

Q. And upon the organization of Log Cabin Mines Company, which was on or about October 18, 1938, you at some later date became director of that company, too, did you not?

A. Yes; that is my recollection of it, sir.

Q. You were a director of the two companies at the same time for a while?

A. I think that is correct.

Q. While you were a director of the two companies and while you were upon Mr. Garbutt's payroll, whether he was trustee or otherwise, the contract of December 17, 1938 was made, was it not?

A. Well, will you bring that out a little more clearly? As I understand it you are referring to this as Mr. Garbutt as trustee?

Q. I do not want to bind you that he was trustee.      A. Yes. [147]

(Testimony of Russell F. Collins.)

Q. You brought it up yourself.

A. All right; that is fair.

Q. I merely clarify that slightly.

A. All right; that is correct.

Q. Anyway, you were a director in both companies at the time the December 17, 1938 contract was made.

Mr. Hinckle: I think the minute record shows that, Mr. Abel.

Mr. Abel: Yes; it does show that.

Q. Who negotiated that contract for Mutual Gold Corporation?

A. Which one are you referring to?

Q. The contract of December 17, 1938.

A. December 17, 1938.

Q. Who negotiated it for Mutual Gold Corporation?

A. Well, for Mutual Gold I was very much active, I know, in trying to get the contract signed and agreed upon.

#### Cross Examination

Q. By Mr. Hinckle: Mr. Collins, was any of this money that was paid to you by Mr. Garbutt paid to you in order to get you to induce the Mutual Gold Corporation to enter into any of these contracts?      A. No, sir. [148]

#### Redirect Examination

Q. By Mr. Abel: Are you still working at this mine?      A. Yes, sir.

(Testimony of Russell F. Collins.)

Q. What are you, assistant manager?

A. Me?

Q. Yes.

A. I am clean-up man and a little bit of everything. I do a little bit of everything that comes along. [149]

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WILLIAM L. GRILL,

called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

A. W. L. Grill.

Direct Examination

Mr. Abel: Mr. Grill is called as an adverse witness also.

Q. Mr. Grill, would you please examine the check of September 29, 1938—and I will hand it to you—in the sum of \$150?

A. Yes, sir. I have examined it.

Q. Did you receive that check on or about the day it bears date from Mr. Garbutt?

A. Possibly the same date, I believe.

Q. On or about the same date?

A. I believe so. I am not positive. That time goes by and I would not swear about the date.

Mr. Abel: I offer the check in evidence. May I detach it?

(Testimony of William L. Grill.)

Mr. Hinckle: Surely.

Mr. Abel: The check for \$150 bearing date of September 29, 1938, issued to Wm. L. Grill, signed "Frank A. Garbutt", No. 16,669.

The Clerk: Exhibit 73.

Q. By Mr. Abel: Is that the same disbursement that is entered up in the bill of particulars under date of September 20, 1938, "miscellaneous expenses, \$150"? [150]

A. I don't know. I did not make up the bill of particulars, so I can't tell you.

Mr. Abel: Will you get the exhibit to the Garbutt deposition?

Mr. Hinckle: Mr. Abel, we will stipulate it is item No. 2 in your tabulation on page five of your bill of particulars.

Mr. Abel: Yes. The date seems to be incorrect, but we obtained that from you.

Mr. Hinckle: That is the only item.

Mr. Abel: And the only point I wanted to emphasize about it is that it does not purport to have been issued to Mr. Grill but to "miscellaneous expense." That is the only point. On the books it did not show issued to Mr. Grill.

Mr. Hinckle: I assume that is true, Mr. Abel. I don't know about that. If you say that is true, all right. Did you examine the books?

Mr. Abel: When we get to the exhibits to the Garbutt deposition we will check it. That will be all, Mr. Grill.



(Testimony of William L. Grill.)

The Court: Do you want to cross examine yourself?

The Witness: I would like to explain what the check is. It seems to me that is rather important.

The Court: You may make any explanation you want.

The Witness: This check was expenses of a trip to Los Angeles, advanced by Mr. Garbutt for and on behalf of the Mutual Gold Corporation. It is my recollection that that was paid at the time or about the time that I came down here, when [151] Mr. Vance and Mr. Abel—there was a session here at that time of about two or three days and I was called down in an effort or in a conference to settle the various disputes between Mr. Vance and the Mutual Gold and Mr. Garbutt. It might have been later, but that is my recollection of the time. And it was no payment by Mr. Garbutt for any service of any kind or character whatsoever.

Mr. Abel: Are you through, Mr. Grill?

The Witness: Yes.

Q. By Mr. Abel: Isn't this the sequence of events: That the meeting of the stockholders to ratify the contract of September 2nd was called for Spokane for September 24th; that on the 18th or 19th, before that, it was called off by the Board; that on the 24th the objecting stockholders met in Spokane and came right down here and were here on the morning of the 26th and you arrived on the morning of the 27th?



(Testimony of William L. Grill.)

A. You were here a day before, I think. I flew down and got here.

Q. Yes. You flew down on the night of the 26th.

A. Yes. I don't remember the dates, except I think that is the check and it calls it somewhat to my recollection. [152]

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RUSSELL F. COLLINS,

recalled as a witness in behalf of the plaintiffs, having been previously duly sworn, testified as follows:

Further Direct Examination

Q. By Mr. Abel: Did you have anything to do with what I will call the "termination contract" of October 31st, or what we will call the "interim contract" of November 1, 1938?

A. Do you mean the termination?

Q. Yes; the termination of the one contract and the making of another one?

A. Nothing whatever, sir.

Q. You did not have anything to do with that?

A. No, sir.

Q. Did you have occasion during that time to come to Los Angeles from Leevining?

A. I would not be sure as to the dates, but I remember several trips that I have made from Los Angeles, probably that one, too, I think along that time.

(Testimony of Russell F. Collins.)

Q. I call your attention to an expense account totaling some \$128.05, under date of October 25th. Is that your signature? Did you prepare that expense account?

A. What year is this, Mr. Abel?

Q. That same year, October, 1938. Is that your signature to that expense account? [153]

A. Oh, yes; that is my signature. Yes; that is my signature.

Q. By Mr. Abel: Well, who other than you during the months of September or October, 1938, was representing Mutual Gold Corporation in Los Angeles, authorized to incur expenses to be paid at the request of Mr. Garbutt?

A. There is no evidence we were incurring any expenses authorized to be paid by Mr. Garbutt.

Q. I am now referring to the \$150 paid to Mr. Grill.

A. Yes.

Q. Who sent for him? You were present at that meeting?

A. I think I wired for him. That is my recollection, that I wired for him.

Q. You wired for him?

A. That is my recollection; yes.

Q. Did you do that after conference with Mr. Garbutt?

A. No. I don't know that it was before or after.

[154]

A. R. CARTER,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. A. R. Carter.

Direct Examination

Q. By Mr. Abel: What relation do you bear to Frank A. Garbutt, one of the defendants here?

A. I don't bear any relation to him.

Q. Business relation?

A. Business relation — I keep his accounts and do various work around the office.

Q. You are employed in the office, are you?

A. I am; yes.

Q. And about the Log Cabin Mines Company, have you always kept its books of entry and account also?

A. Well, since we took the books into our office.

Q. And when was that?

A. About the first of April, 1939.

Q. Have you the account of disbursements made to Russell F. Collins during the period from September 1st to February 28, 1939?

A. September 1, '38, September 1, '38. Why, that was before the inception of Log Cabin Mines. I don't have an account with Russell Collins. It is just contained in the regular account of the checks as written during that period. [157]

(Testimony of A. R. Carter.)

Q. Whose checks?

A. These checks here were signed by Frank A. Garbutt.

Q. Upon his personal account?

A. Upon his personal account; yes.

Q. Would you please let me see the ledger account?

A. Well, that is a transcript of the ledger account up to the time that the Log Cabin Mines started to take over. This is the Log Cabin Mines. That is an exact copy from the ledger account.

Q. Where is the ledger account itself?

A. I didn't bring that along because the paper that was given to me said to bring the papers of the Log Cabin Mines Company, and I brought all the books of the Log Cabin Mines and I also brought this in case you wanted to ask some questions about it.

Q. But you can't produce the ledger accounts?

A. Oh, I can produce the sheets. They will be exactly the same as that, no difference whatsoever, dates and everything given there. There are some checks in there to Russell Collins.

Q. I think we shall want to see the origin of the account and how it was carried from the start.

A. Well, that is just the way it was carried from the start. That is the exact copy. You have seen the sheets with those same things on down in our office about a year ago.

(Testimony of A. R. Carter.)

Q. The item on the second sheet here "miscellaneous [158] expense"—

A. It is written "William L. Grill."

Q. I noticed the name "William L. Grill" has been written in?      A. That is right.

Q. The entry upon the book did not show that, did it?

A. It showed "William L. Grill" but didn't show the "miscellaneous." These here were made up at one time. I didn't go back and copy these over the second time. They were made up for another purpose at a different time, the complete transcript of the ledger account. But every item is itemized there and wherever it says "miscellaneous" the "miscellaneous" is cut down and distributed.

Q. When Mr. Garbutt testified in the Spokane case by deposition you produced the original ledger accounts, did you not?

A. Was that the time that you was down there in the office?

Q. Yes. And then you made a transcript of it?

A. Yes. Yes; you looked at the ledger at that time, if that is the time you were in the office.

Q. And at that time the name "William L. Grill" did not appear?

A. Yes; it appeared on the ledger and you took note of it right there that it did.

Q. How do you explain that it shows it on September 20th? [159]

(Testimony of A. R. Carter.)

A. September 20th?

Q. Yes.

A. That is the day the check was given.

Q. The check is in evidence and purports to be September 27 or 29—September 29.

A. September 29?

Q. Well, that is a clerical error?

A. It probably is a clerical error, because you see here is one of the 27th right before it, you see in the typewriting.

Q. Yes. A. That should be "29."

Q. For what period of time did Frank A. Garbutt issue his personal checks on this property involved in this case?

A. You mean in payment of the bills of the mine, the Log Cabin Mines Company?

Q. Or any bills at all to directors of Mutual or anybody?

A. Well, they were from September 21st to about March—or, no—April 5th or 6th of 1939. Then is when the Log Cabin Mines bank account was opened.

Q. What date was that?

A. Well, let's see. The book here is better than anything else. The first check was issued on April 17th; that was No. 1; and the deposit was made on April 15th, the first deposit of \$1,000.

Q. And the remaining \$9,000 was when? [160]

A. The 17th, April 17th.

Q. That paid the capital stock of Log Cabin Mines Company, that \$10,000, didn't it?



(Testimony of A. R. Carter.)

A. I don't know, as far as that is concerned. I think it did, but I wouldn't say for certain because I didn't handle that phase of it.

Q. Will you have the payroll showing when Mr. Garbutt started to employ labor at that mine?

A. Well, I have the dates of it; yes. I don't have the actual payrolls with me.

Q. Not the date of the check, but the date the employment commenced. To refresh your recollection—withdrawing that question for the moment. Do you personally know that Garbutt operated this mine in some capacity from the time he originally took hold up until April 15, 1939?

A. Well, no; I don't.

Q. By the Court: Were you in his employ at that time?

A. Yes; but part of the time it was operated under the name of "Frank A. Garbutt", and a short time later it was operated under the name of "Mutual Gold Corporation." That is just the way that we turned in the statements to the Federal Government for the compensation insurance.

Q. By Mr. Abel: Then you can produce a ledger account in the morning, the original ledger account, of both those accounts, can you?

A. Well, the account was all carried in one account on [161] the books or ledger sheet in the books under "Frank A. Garbutt".

Q. Under the name "Frank A. Garbutt"?

A. Yes; the ledger sheet was, but the account

(Testimony of A. R. Carter.)

was called the "Mutual Gold Corporation" after a certain time.

Q. Upon the books of Mr. Garbutt, then, you say that there was one account a part of the time that was in his name on the same sheet and as a part of the same account?

A. It was always in the name in the book as the "Mutual Gold Corporation"; but, as I say, we operated at one time under his name, and as far as the tax statements were concerned, and then it was taken over by the Mutual Gold operation. [162]

The Witness: Do you want these other books here, too? These are the books, do you want those, too?

Mr. Abel: Well, we might look at those now. Let me see what is shown in this one.

Q. May we use this?

A. These books start after those were complete, after those.

Q. Show me the book. Would you turn to the account here involved?

A. Which account is that?

Q. This Log Cabin account.

A. It is all Log Cabin, the whole ledger is.

Q. The whole ledger is the Log Cabin account?

A. Yes.

Q. Commencing what date?

A. Well, let's see. Of course, that is not probably the first starting dates, but that account probably was started afterwards. There wouldn't be anything in it to start it with. It starts April 1st,

(Testimony of A. R. Carter.)

Stock. Those back there are just blanks. There is nothing in that.

Q. Were you familiar with the organization of Log Cabin Mines Company?

A. Well, in regard to what? [163]

Q. In regard to its incorporation?

A. No; I was not.

Q. Were you an officer?

A. No—well, I might have been for a day or two or something of that sort.

Q. For what purpose?

A. Well, at the time that they incorporated, I believe I was a director for probably, oh, it might have been a week or something of that sort.

Q. At whose request?

A. Well, at the request of Mr. Hinckle, the attorney.

Q. And how did you come to sever that relationship?

A. Well, somebody else was—I don't know who was, but somebody else was put in as a director, a permanent director. My understanding was that I was only asked to act as director a few days, temporarily.

Q. Who told you that?

A. Why, nobody told me that. I just was under the impression that that was the case.

Q. What is shown on Sheet 1, this sheet?

A. That is an account for Russell Collins, money advanced to him and money paid back.

(Testimony of A. R. Carter.)

Q. What is the first item?

A. It is a check for \$100.

Q. Under date of February 5, 1940?

A. February 5, 1940; that is right. [164]

Q. And the total amounts of the checks issued to him to February, 1940—

A. Was \$359, of which he paid back \$98.

Q. Still indebted for the balance?

A. For \$261; that is right.

Q. That is Log Cabin Mines?

A. That is right.

Q. Have you any other accounts with any of the former directors of Mutual Gold?

A. No; that is all.

Q. He is the only one, is he?           A. Yes.

Q. And he ceased to be a director, didn't he, of Mutual Gold, or you don't know?

A. I don't know that. [165]

#### Cross Examination

Q. By Mr. Hinckle: Mr. Carter, in keeping the books that you have before you do you take instructions from anyone as to just how you shall handle the account?

Q. By Mr. Hinckle: By that I mean, Mr. Carter, does Mr. Garbutt or does anybody come to you and say, "Charge this to the Mutual Gold" or "Charge this to John Smith," or just how much discretion do you use yourself in working out these accounts.

(Testimony of A. R. Carter.)

A. Well, as the usual thing, why, somebody tells me to what account it is to be charged or the accounts are O. K.'ed and it is written on there "Log Cabin Mines." [167]

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R. P. WOODWORTH,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. R. P. Woodworth, W-o-o-d-w-o-r-t-h.

Direct Examination

Q. By Mr. Abel: Your residence?

A. Spokane.

Q. Your profession?           A. Lawyer.

Q. By the Court: Your residence is where?

A. Spokane.

Q. By Mr. Abel: You are an attorney-at-law?

A. Yes, sir.

Q. Were you connected with Mutual Gold Corporation during the year 1938 for a time?

A. Yes.

Q. And you had been a director for some time previous, had you?           A. Several years.

Q. Were you present at the directors' meeting held at the Vance Hotel, Seattle, on August 13,

(Testimony of R. P. Woodworth.)

1938, being the date that the Cecil B. De Mille proposal came before the board?

A. Yes, sir; I was there at that meeting. [168]

Q. By Mr. Abel: I call attention, Mr. Woodworth, to the minutes of that date, and ask you to tell what the [170] proposed offer was which is referred to therein, quoting:

“Considerable discussion was had in regard to this matter and Mr. Lloyd J. Vance stated that he had a proposition which he would like to submit to the Board if they would consider it, and after some discussion the proposed offer was read by the Board, Mr. Vance explaining at the time of the reading thereof as to the changes he desired made.”

State whether or not that was a renewal of the previous offer.

Mr. Moore: What is the date of that, may I inquire?

Mr. Abel: August 13th, one week later.

A. Yes; that was a renewal of the offer, and, as I recall that, he had agreed to make some changes, some concessions which had been requested by some members of the board. I think we went over that contract very carefully at that meeting. That is my recollection.

Q. Do you remember as to whether or not at that meeting—I read again:

“It appearing that the majority of the Board was not willing to enter into a contract with



(Testimony of R. P. Woodworth.)

Mr. Lloyd J. Vance of any kind, and on request of Mr. Ferbert that the meeting be adjourned until Tuesday, August 16, 1938, at 10:00 o'clock A. M., at the Vance Hotel, Seattle, Washington, in order that a representative from Mr. Cecil B. De Mille might be at the meeting [171] to explain and clarify the proposition which he was presenting to the meeting,  
\* \* \* the meeting was adjourned \* \* \*

A. I think that is a correct statement of what happened.

Q. Were you present at the directors meeting one week later, or three days later, August 16th?

A. I think I was. It is my recollection that that is the time that Keily came up.

Q. Quoting from the minutes:

“Further discussion was had on the offers of Mr. Vance and Mr. Cecil De Mille.”

And the meeting adjourned.

A. Yes; I was present.

Q. State whether or not you were present at the meeting on August 27, 1938?

A. I think I was. I was present at most of those meetings. The minutes show that.

Q. That you were present?

A. That I was present, though they got my name spelled wrong.

Q. State whether or not at that meeting the notice of forfeiture of contract, rescission of the contract—

A. No; I see—

(Testimony of R. P. Woodworth.)

Q. —was up for consideration, that bearing date August 25, 1938?

A. It bears August 27th. [172]

Q. But the rescission bearing date—no; it is two days later. Was it at that meeting with that pending termination of the contract that the Garbutt deal was agreed to?

A. Yes. In fact, that was one of the inducements.

Q. Do you know how the Garbutt proposal first came to the attention of the board of directors?

A. Yes, sir.

Q. On what date and under what circumstances?

A. It came August 6, '38 at the board meeting prior to the stockholders meeting of that date.

Q. And who communicated the matter?

A. Mr. Ferbert, I believe, principally, and Mr. Collins, Russell Collins.

Q. As to whether or not they had come up from California to the Spokane meeting?

A. Yes; they had.

Q. And what did either of those gentlemen say in connection with Mr. Garbutt and in connection with the Lloyd J. Vance matter? [173]

A. They stated that Mr. Garbutt was willing to make a much better deal than the one that was being submitted to the board at that time.

Q. By Mr. Abel: By Lloyd J. Vance?

A. Yes, sir.

(Testimony of R. P. Woodworth.)

Q. By the Court: How did you vote on the contract?

A. I voted against it at all the board meetings.

Q. At all the board meetings           A. Yes.

Q. By Mr. Abel: Up to that time had the board unanimously favored the Lloyd J. Vance proposal?

A. Well, all members that were present had, but it was not unanimous. Mr. Collins and Mr. Ferbert learned at the meeting that the Vance proposal was adopted.

Q. And during the interim between the 6th of August and the 15th of August do you know where Ferbert and Collins went from Spokane?

A. I understood they came to California to see Mr. Garbutt.

Q. And came back with the De Mille proposal on the 13th?           A. That is correct.

Mr. Abel: That is all.

#### Cross Examination

Q. By Mr. Hinckle: Mr. Woodworth, were you a stockholder in the corporation on August 6, 1938, Mutual Gold? [174]           A. I was. Yes; I was.

Q. Did you vote in favor of the resolution which was adopted at that meeting authorizing the board of directors to deal with the property as they saw fit, or to that effect?

A. I voted for that resolution that was adopted at that meeting because of the representations that were made at the meeting and prior to it.

(Testimony of R. P. Woodworth.)

Q. I could not hear you.

A. I voted for the resolution which was adopted at that meeting because of representations which were made at the meeting and prior to the meeting.

Mr. Hinckle: I did not ask you that. I move to have that stricken, your Honor. It is not responsive to the question.

The Court: Yes; it will be stricken. And answer the question: Did you vote for the resolution?

A. I did.

Mr. Hinckle: That is all.

#### Redirect Examination

Q. By Mr. Abel: What, if any, representations were made at that meeting?

A. Well, the representations that I have just testified to, that there would be a much better deal made than the one which had been presented by Lloyd J. Vance; and the directors at the meeting prior thereto and at the meeting [175] afterward all agreed that that was what would be done, that they would accept a better proposition.

Mr. Abel: This is a new matter.

Q. Were you present at a meeting of the board of directors held at the Vance Hotel on or about the 18th of August, when Mr. Grill phoned to Mr. Garbutt about whether he would accept a payment of the contract in full?

A. I don't—I remember something about that, but I don't recall it was at that date. It was about that time.

(Testimony of R. P. Woodworth.)

Q. It was after a directors meeting, was it?

A. I understood it was.

Q. What was the communication?

A. I was not present when it happened, but I understood that—

Q. Well, never mind then. A transaction took place after the notice of rescission, did it, whatever it was?      A. Yes.

Q. Which was the 25th of August. Did that come before the board of directors in your presence?

A. It came up at that meeting. It came upon that day.

Q. What was the message communicated by Mr. Grill as coming from Mr. Garbutt?

A. Well, as I recall, that was with regard to the payment that was due. I think there was something that was behind in the payment or some talk about whether or not he would accept the full amount of the balance due. [176]

Q. On the contract of purchase?

A. On the contract, on the purchase contract.

Q. What was the information communicated by Mr. Garbutt?

A. My recollection is that he would not even accept the full amount. He was claiming a default, and that even if the full amount of the balance of the purchase price was paid he would not take it. It was something like that. I don't remember clearly, but that is my recollection. [177]

**M. F. HALEY,**

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name? Will you state your name, please?

A. M. F. Haley.

**Direct Examination**

Q. Did you enter the service of Frank A. Garbutt during the fall of 1938 upon the mining property involved in this case?

A. Yes, sir; on the 10th.

Q. On what date did you enter his service at that mining property?

A. The 10th day of September.

Q. The 10th day of September?

A. Yes, sir.

Q. Of 1938? A. Yes, sir. [178]

Q. When was the service terminated?

A. The 24th day of May, '39.

Q. 1939? A. Yes, sir.

Q. During that period from the 10th day of September, '38 until the 24th of May, 1939 in what form were you paid your wages?

A. By check.

Q. Whose check?

A. Well, I think all of them was practically Mr. Garbutt's, and every one of them was Mr. Garbutt's, but they might have had some different kind



(Testimony of M. F. Haley.)

of a form on them. But that is my remembrance, as far as that goes, signed by Frank A. Garbutt.

[179]

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J. R. STURGEON,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. J. R. Sturgeon.

Direct Examination

Q. Did you ever work at this mine involved in this case? A. Yes, sir.

Q. When, if at all, did you enter the service of Frank A. Garbutt in connection with working at that mine? A. September 26th, '38.

Q. September 26, 1938? A. Yes, sir.

Q. How long did you work, until when?

A. Until the 11th of April, '39.

Q. And during that time state whether or not you had charge of the underground operations?

A. I did.

Q. How were you paid your wages? [180]

A. By checks.

Q. Whose check? A. Mr. Garbutt's.

Q. Throughout the whole period?

A. Yes, sir.

(Testimony of J. R. Sturgeon.)

PLAINTIFFS' EXHIBIT 78

is set forth in the Complaint, as Exhibit 3 thereto, at page 42. [181]

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Mr. Anderson: That will be 78. I offer in evidence a letter from Frank A. Garbutt to M. F. Haley, Leevining, California, dated September 7, 1937 (1938), the subject matter of which is an inquiry——

Mr. Abel: 1938.

Mr. Anderson: I beg pardon. September 7, 1938 is the date of the letter. The subject matter is——

The Court: Read it. It is only four lines.

Mr. Anderson (reading): "I have learned from the North Star Mine at Grass Valley that The American Manganese Steel Co., Oakland Pier, make them exceptionally good shoes and dies. Will you kindly give me exact dimensions so I can ask for quotations."

The Clerk: Exhibit 79.

Mr. Anderson: That will be Plaintiffs' Exhibit 79. I offer in evidence a letter from Frank A. Garbutt to M. F. Haley, Log Cabin Mine, Leevining, California, dated September 17, 1938. The subject matter is the status of the mine in general, but it is introduced for the purpose particularly of the "P. S." which is typed just below Mr. Garbutt's

(Testimony of J. R. Sturgeon.)

signature with the initials "F. A. G.", and reads as follows:

"P. S. This delay will not affect you and you will kindly proceed with the work you now have in hand as rapidly as possible."

The Clerk: 80. [185]

Mr. Anderson: That is Plaintiffs' Exhibit 80. I now offer in evidence a letter from Frank A. Garbutt to M. F. Haley, Leevining, California, dated September 19, 1938, which reads as follows:

"I have not had time to analyze your list of supplies and material necessary to operate to May 1st. I hope to be able to get over this during the day.

"None of the engineering or supply houses would guarantee successful operation from an elevation of more than about 35 feet. Pumping the sand is probably out as there does not appear to be any other way of doing it, from a 35 foot elevation."

The Clerk: That is Exhibit 81.

Mr. Anderson: Which letter is Plaintiffs' Exhibit 81. I offer in evidence a letter from Frank A. Garbutt to M. F. Haley, Log Cabin Mine, Leevining, California, dated September 20, 1938, the subject matter of which is operations at the mine, and I will read the last paragraph thereof:

"After going through your list of supplies and proposed changes in the mill I decided we

(Testimony of J. R. Sturgeon.)

could save both time and money if you come here for a conference, therefore wired you accordingly.”

The Clerk: 82.

Mr. Anderson: Which letter is Plaintiffs' Exhibit 82. I now offer in evidence a letter from Frank A. Garbutt to M. F. Haley, Log Cabin Mine, Leevining, California, dated [186] October 22, 1938, which is as follows:

“I am enclosing an order herewith which please read, sign and return the original, keeping the copy for your files.”

The Court: What is the date of that?

Mr. Anderson: The date of that is October 22, 1938. I introduce the enclosure as part of the exhibit.

The Clerk: Exhibit 83.

(Testimony of J. R. Sturgeon.)

PLAINTIFFS' EXHIBIT 83

FRANK A. GARBUTT

Suite 712—411 West Seventh Street

Los Angeles, California

Oct. 22, 1938.

Mr. M. F. Haley,  
Log Cabin Mine,  
Leevining, Cal.

Dear Mr. Haley:

I am enclosing an order herewith which please read, sign and return the original, keeping the copy for your files.

Sincerely,

FRANK A. GARBUTT

FAG-C.

TELEGRAM

Los Angeles, California,  
October 31, 1938. 11:36 AM

J. R. Sturgeon,  
Leevining, Calif.

Kindly sign and have Mr. Haley sign acknowledgment of order October twenty second and send to me by return mail.

FRANK A. GARBUTT.

(Received by telephone from Bishop 6:00 PM  
10-31-38.

(Testimony of J. R. Sturgeon.)

Oct. 22, 1938.

Mr. M. F. Haley,  
Log Cabin Mine,  
Leevining, Cal.

Dear Mr. Haley:

If we build a pipe line from the drain tunnel to the lower end of the flume a serious situation may arise, and this is especially true if this pipe line is eighteen inches or such a matter in diameter.

If any large volume of water gets into this line that is more than will be readily absorbed at the lower end of the flume, it might break away and damage Mrs. Cunningham.

To avoid any chance whatever of this happening, I hereby issue the following order:

#### ORDER

At no time shall any water or tailings be run into this pipe line which extends from the drain tunnel to the lower end of the flume unless and until a written order is obtained from this office, signed by the undersigned, Frank A. Garbutt.

This order applies to any and all tailings now on the hillside or that may hereafter be deposited there by anyone whomsoever.

It also applies to any run off water from rains or melting snow.

It also applies to any tailings made or produced at the mill hereafter.



(Testimony of J. R. Sturgeon.)

The only water that may be run into this pipe line is mine water, from the drain tunnel when run into this pipe line at the tunnel mouth when introduced in such a way that no tailings or other water can enter the pipe line either at this or any other point on the pipe line.

Kindly see to it that this order is promulgated to anyone who may have occasion to be near this line even though they may have no authority in the premises.

FRANK A. GARBUTT

I have read the above order this.....day of....., 1938, and I understand it and will be governed thereby.

.....

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Mr. Anderson: That is Plaintiffs' Exhibit 83. I now offer in evidence a letter from Frank A. Garbutt to M. F. Haley, Log Cabin Mine, Leevining, California, dated November 19, 1938, which I believe I should read as soon as the clerk marks it.

The Court: What is the import of it?

Mr. Anderson: It has to do with not having heard from Haley for some time, asking him to write at least twice a week, and finally——

The Court: May I ask if the purpose of these letters is to show Garbutt's activity in connection with the mine?

(Testimony of J. R. Sturgeon.)

Mr. Anderson: Yes. I think he was giving orders to Haley, asking him to come for conferences and the like during the period this correspondence covers.

Mr. Abel: The continuity of the activities despite these various contracts changing the status.

Mr. Anderson: It states that Mr. Collins has requested that he be taken off the pay roll, etc. [187]

Mr. Abel: The matter on the back of the sheet is not offered.

Mr. Anderson: There is certain writing on the back which is disclaimed as part of the exhibit.

The Court: Put a pencil through it so I will not be concerned in trying to read it.

The Clerk: Exhibit 84. [188]

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PLAINTIFFS' EXHIBIT 84

FRANK A. GARBUTT

Suite 712—411 West Seventh Street

Los Angeles, California

Nov. 19, 1938.

Mr. M. F. Haley,  
Log Cabin Mine,  
Leevining, Cal.

Dear Mr. Haley:

I haven't heard from you for some time. I would like to have letters at least twice a week and oftener

(Testimony of J. R. Sturgeon.)

if you can find time, telling me what you are working at, and what you have done, and what remains to be done, together with your opinions, conclusions, etc. This will be very helpful and I will respond in kind where possible.

For your information, Mr. Collins has requested that he be taken off the payroll and, therefore, he is no longer in the Mutual's employ. The hauling work he is doing is on his own account and he is being paid under contract.

He has authority from the Mutual, I believe, to try to herd the hillside tailings into the flume or into the pipe line when it is built provided they start to move. Before this time arrives, I would like to have your comment upon the effect that will or may have at the lower end of the flume.

Yours sincerely,

FRANK A. GARBUTT.

FAG-C.

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A. R. CARTER,

recalled as a witness on behalf of plaintiffs, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. For the moment, did you prepare Exhibit 85?

[193]

A. Yes; but I don't remember what at that time. Yes; I prepared it originally.

(Testimony of A. R. Carter.)

Q. Did you prepare it from the ledger?

A. Yes.

Q. How did you come to omit Mr. Grill's name in the statement and give "Miscellaneous expense \$150" under date of September?

A. Well, I have done that with other items, too.

Q. No. But why did you do it in this instance? Was it to hide from us the fact that it was paid to Mr. Grill?

A. No. At the same time that you took the deposition I showed you the ledger sheet here with Mr. Grill's name on it.

Q. You did?

A. Oh, yes. You looked right over my shoulder and I pointed it out to you in Mr. Garbutt's office. [194]

Q. Would you now turn to the journal entry of October 20, 1938 with reference to the expense of incorporation—"Incorporation Expense Log Cabin Mines Co."?

A. Let's see; you said "October 20th". It was a \$36.38 amount?

Q. Yes. A. Here it is right here.

Q. What is the entry there?

A. "Check to D. E. Hinkle, attorney, incorporation expense 36.38."

Q. And under date of November 2, 1938: "Filing Permit to sell stock, Log Cabin Mines Co. \$10"?

A. "David E. Hinkle" right here, "Filing Permit to sell stock \$10." [195]

(Testimony of A. R. Carter.)

Q. Can you by reference to the original ledger account show any item of expense charged in the original ledger under date of September 2, 1938?

[196]

A. No. That item that you are pointing to there has nothing to do with the Mutual Gold. That was charged to Mr. Garbutt's personal expense. This account was put onto the same sheet as that account. That was his own personal expense account.

Q. But it shows that on September 2, 1938 Mr. Garbutt made a trip to the mine?

A. All right, and he paid his own expenses.

Q. Yes. But the point is he made a trip to the mine on September 2, 1938, according to his records.

A. That was the time the entry was made there and the check given for it. I presume it was about that time, that is, the time the check was given. The time that he went to the mine I couldn't say definitely, with the exception that was probably near that time.

Q. This entire transaction, then, dating from September 2nd or from August 29th——

A. It dates from August 17, 1932.

Q. Has that any relation to this case?

A. Well, I don't think so, as far as that is concerned.

Q. No. the account is "Log Cabin Mines—Mutual Gold Corporation," is it?

A. That is right.

(Testimony of A. R. Carter.)

Q. That is how it is carried in the ledger. And outside of the item in 1932, the next item is August 29, 1938, "Telegrams to Seattle 24.98"? [197]

A. That is what it says there; yes. That is the item.

Q. And the next item is under date of August 15: "M. J. Keily ticket to Seattle 69.35"?

A. That is the entry; yes.

Q. And next is September 2, "F. A. G. exp trip to Mine 80.00"?

A. None of those items were charged to Mutual Gold, though; all personal expense of Mr. Garbutt's. [198]

Q. By Mr. Abel: Mr. Carter, have you the mint returns from this mine during the period in controversy here?

A. (Witness producing papers.)

Q. Are these all of them?

A. I presume so. They were what we took out of the file. I just have them in my file.

Q. So far as you know, they are complete?

A. So far as I know, they are.

Q. That is the net amount received from the mint for the ore? That is right, isn't it?

A. That is right; that is the number of ounces of gold received and the fineness of the gold. [199]

Q. By Mr. Abel: Can you give the total?

A. There is \$6,132.02 in 1939 in two items. The balance of 1939 is \$75,357.81; and in 1940 there is \$189,256.32; and in 1941 there is \$6,220.77.



(Testimony of A. R. Carter.)

Q. Commencing what period and ending what period do these figures apply to?

A. The first check for a shipment was received on March 23, 1939. The last check was received on March 12, 1941.

Q. But covering the mint returns for what period?

A. For the period between those dates.

Q. I am now referring not to the date of the check of the mint returns, but, as it were, the date of production from the mine itself?

A. That I couldn't tell you. [200]

Q. By Mr. Abel: Mr. Carter, can you furnish us with a breakdown of the item found on Exhibit 85, sheet 4, being the December, 1938, advances, the last item, reading: "Miscellaneous Expenses \$365.45"?

A. Three and one-half months' office service at the Los Angeles office at \$100 per month, \$350; two books on mining, 15.45.

Q. Where is that?

A. It is written right there.

Q. It is not on the exhibit itself?

A. Not on that paper; no.

Q. I now direct your attention to sheet 3 of the same exhibit, Exhibit 85, the item under date of November 30: "Miscellaneous Expense \$250" Would you break that down for us?

A. "W. L. Grill traveling expense \$150; D. E. Hinckle, attorney's fees \$100."

(Testimony of A. R. Carter.)

Q. That is not the \$150 that was previously paid to Mr. Grill?

A. Naturally it is not. It is a different date entirely.

Q. Let us see the journal entry of that item.

[202]

A. Here is one: "D. E. Hinckle attorney's fees \$100." That is \$100. See it?

Q. By Mr. Abel: I am interested in the W. L. Grill item.

A. I thought you asked for both of them. Here it is right here "William L. Grill, attorney, traveling expense \$150."

Q. Under what date is the journal entry?

A. Under the date of November 2nd.

Q. Have you any other items reported in the exhibit as "Miscellaneous expense"?

A. I think probably there is.

Q. Which covers money paid to Mr. Grill?

A. No; but I have other items as "Miscellaneous expense."

Q. Yes. Well, I am interested in the——[203]

A. Franchise tax.

Q. Why was it not disclosed in the exhibit that it was a payment to Mr. Grill?

The Court: I think that has been asked and answered.

Mr. Abel: This is a previous one, your Honor, the \$150. There is another payment to Mr. Grill of \$100.

(Testimony of A. R. Carter.)

A. Why, because that we put certain things under "Miscellaneous expense," taxes, attorneys' fees, and so forth. We have other items besides attorneys' fees and payments to Mr. Grill under "Miscellaneous expense."

Q. Let me see the journal entry for December 31st of \$365.45.

A. What did you say the date was, December 31st?

Q. December 31st "Miscellaneous expenses \$365.45."

A. That is a journal entry which I don't think I have that, with the exception of on that sheet there.

Q. Well, let us have the journal entry.

A. It is not on this one here.

Q. Let us have the journal for——

A. This is the cash journal. This here is a cash journal. There is one or two items there. That was a charge from the journal.

Q. A charge but not an actual disbursement at the time?

A. No, no; it is not a disbursement. It is just simply a charge for those services at that time and there was no check drawn for it, never spent. [204]

Q. The \$365, then, is principally a charge for the use of Mr. Garbutt's office?

A. For the work that we do there in our office, the stenographer, myself and other people, for the

(Testimony of A. R. Carter.)

Mutual Gold Corporation. There was no check ever issued for it. It has never been paid. [205]

Q. By Mr. Abel: The miscellaneous expense that you [206] have reference to under date of December 31, 1938, was for services rendered in connection with this mining property?

A. That is what it was.

Q. Whether it was operated for Mutual Gold, or operated for Mr. Garbutt, or operated for Log Cabin?

A. Yes. We did a lot of office work there for it.

Q. But there was no segregation of the account or the charge?

A. What do you mean "segregation"?

Q. Any segregation between the books of Mr. Garbutt.

A. What do you mean "segregation"? I don't understand that.

Q. Well, any separation of charges for the particular service for one or the other?

A. If it had been charged up by our office for all the time those people put in there, the charge would have been about four times as much as this

Q. The point is whether they were all run together in the books.

A. What do you mean run together?

Q. By the Court: Did you make separate charges against Mr. Garbutt, Log Cabin or Mutual? Did you segregate the [207] account?

A. We just charged up \$100 a month was all.

(Testimony of A. R. Carter.)

Q. Right straight through?

A. Right straight through; never charged more or never charged less. [208]

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RUSSELL F. COLLINS,

recalled as a witness on behalf of defendants, having been previously duly sworn, was examined and testified as follows:

Direct Examination [221]

Q. By Mr. Hinckle: In 1938, Mr. Collins, was the mine in operation?

A. The mine was closed down on April 22nd, 1938, under Mr. Vance and operated by Mr. Keily.

Q. After the bills and expenses were paid was there [225] enough money left from the treasury of the Mutual Gold or available to Mutual Gold to pay the obligations which plaintiffs have set up as then existing, some, I believe, \$60,000—something like \$60,000, I think? The exact amount is not material.

A. No, sir; I am sure there was not.

[226]

Mr. Abel: Your Honor, I could make an admission here that would shorten this up entirely. The company had this property which it considered quite valuable. The recovery from this old mill was not sufficient to——

(Testimony of Russell F. Collins.)

The Court: Well, they had what they called a pilot mill there which was not sufficient, it was not operating efficiently.

Mr. Abel: They could not recover the values and they could not pile up operating capital or a cash reserve. The mine quit, or the mill quit, and the mine, too, for that matter—were shut down in April of 1938 and until the transaction complained of the directors met from time to time to consider how to raise the money. It did not have funds to carry on. Its creditors were not pressing. Its creditors were \$30,000 of production notes, of which the Vances owned a majority, which were payable out of production. The balance of its accounts was principally J. A. Vance, who had loaned some \$18,000 and who was not pressing; Mr. Stiegler and Mr. Ferbert, the one, I believe, with \$3,000 and the other with \$2,000, who were not pressing. The mine was not in pressing need of money to pay its bills, but it was in need of money if it was to build a new mill or to operate its old mill; and it was [229] under those circumstances that the meeting of July 18, I believe the date was, was held.

The Court: Well, it did not have the money to make the payment on its contract.

Mr. Abel: They did not have the money to make the payment. [230]

Q. By Mr. Hinkle: Mr. Collins, did you have anything [231] to do with obtaining the contract of September the 2nd from Mr. Garbutt?



(Testimony of **Russell F. Collins.**)

A. Yes, sir. September 2nd?

Q. September 2nd, 1938.           A. Yes.

Q. What did you have to do with that?

A. Well, I solicited his cooperation.

Mr. Abel: What? I didn't get it.

The Court: He solicited his cooperation.

Q. By Mr. Hinckle: Where did you solicit his cooperation?

A. In Los Angeles, in his office.

Q. Did you come down here to see him?

A. Yes.

Q. Did you come down especially to see him about that?

A. Concerning our difficulties and how to get out of them.

Q. Did he ask you to come down?

A. Beg pardon?

Q. Did he ask you to come down?

A. So, sir.

Q. When you came down what did you say to him—briefly, now?

A. That we were not satisfied with the offer of the Vances and we would like to have someone that would finance our undertakings. [232]

Q. Did anybody come with you?

A. Mr.— I am not sure whether Mr. Keily was here or whether he came with me. One trip I know he came with me and went back, when we solicited.

Q. You made more than one trip, did you?

A. Yes.

(Testimony of Russell F. Collins.)

Q. Did Mr. Garbutt agree right away when you first broached the matter to him to jump in and lend the money or help you out?

A. He did not.

Q. What did he say that would give you any clue to his attitude?

A. That he did not want to be tangled up with it; that, as I recall his statement, "At my age I don't want to undertake the beginning of a mining proposition."

Q. Did you drop it then?           A. I did not.

Q. What did you do?

A. Well, Mr. Garbutt sort of put us off by saying, "I will give you entree to some friends of mine and maybe they will finance you."

Q. Did he give you that entree?

A. He did.

Q. Who was the friend?

A. Well, one of them was Cecil De Mille, and Mr. Keily, I think—in fact, I know—approached Hal Roach concerning [233] the financing of our undertaking.

Q. Did you make a deal with either one of those?

A. No, sir.

Q. By Mr. Hinkle: Why did you want to make the deal with Mr. Garbutt?

A. Well, considering everything and from every angle, and considering our difficulties, I considered Mr. Garbutt was the most competent person and capable, that is, financially able to carry it through.

(Testimony of Russell F. Collins.)

Q. Were you a director at that time of the Mutual Gold?      A. Yes; I was.

Q. Why did you prefer to deal with Mr. Garbutt rather than to deal with Mr. Vance in that capacity? [234]

A. Well, we had tried Mr. Vance as general manager of the property and I considered his success a failure. [235]

Q. By Mr. Hinckle: You remember, do you, Mr. Collins, when notice of forfeiture was given to Mutual Gold Corporation on or about August 25, 1938?      A. Yes, sir; I know of it.

Q. By Mr. Hinckle: Did that notice of forfeiture influence you in any way to make a contract with Mr. Garbutt [236] or to favor, rather, a contract with Mr. Garbutt?      A. No, sir.

Q. The forfeiture was withdrawn on or about October the 25th, 1938. I am telling you that.

A. As I recall it.

Q. Did that forfeiture which had been withdrawn, notice of forfeiture which had been withdrawn, on or about October the 15th, 1938, influence you in any way toward favoring the contract later made with Mr. Garbutt on December the 17th, 1938?

A. No, sir.

Q. Did Mr. Garbutt ever at any time say anything to you which you considered an attempt to coerce you into making or favoring the making of the contract with him?      A. No, sir. [237]

(Testimony of Russell F. Collins.)

Direct Examination

Q. By Mr. Grill: Mr. Collins, you stated that you were not satisfied with the success of Mr. Vance's failure. Will you state just what you meant by that?

A. Well, to begin with, Mr. Vance was a lumber man and did not understand the operation of a mine and insisted——

Q. How was that evidenced?

A. Well, by the fact that he wanted to dismiss Mr. Keily and said to let him go, and various, various things that came up from time to time.

Q. During what period was that?

A. Well, along '37, '38.

Q. During the period of Mr. Vance's management contract? [238]

A. Under the contract; yes.

Q. State any other matters in connection with his management that influenced you in this connection?

A. Well, one was, he wanted to syphon the water out of a shaft as the means of getting the water out of the shaft, that we could go on down with it. [239]

Cross Examination [241]

Q. Anyway, the amount of stock that you had in Mutual was a few thousand shares at the time of this transaction, wasn't it?

A. You mean in the Mutual Gold?

Q. Yes; in the Mutual Gold.

(Testimony of Russell F. Collins.)

A. Yes, sir. [242]

Q. Soon after August 6th you came down to visit Mr. Garbutt?

A. Yes; I may have.

Q. You drove from Spokane to Los Angeles to visit him?

A. I think that is true.

Q. Had you talked to him before that as to his making a deal?

A. Prior to that time Mr. Garbutt repeatedly insisted that he would not be dragged into the financing of the property.

Q. Then it was at an earlier date than August 6th that you discussed with him his coming into the picture?

A. Well, he was approached, I know.

Q. Who approached him?

A. Well, I think Mr. Keily, and I also was at the meeting; but he absolutely refused to have anything to do with it. [245]

Q. Anyway, you were the one who negotiated this contract with Mr. Garbutt, were you not?

A. You mean the original?

Q. The contract of September 2nd.

A. Well, I had to do with it, I know. I was interested in it; yes, sir.

Q. Who else negotiated it?

A. Well, I think Mr. Ferbert was with me.

Q. Anybody else?

A. And I don't remember whether Mr. Grill was here at the time or not. I don't believe that he was.

Q. The first contract of September 2nd was

(Testimony of Russell F. Collins.)

negotiated while the rescission of the contract was insisted upon, was it not? [247]

A. The original might have been at that time, I am not sure.

Q. Well, don't you know that it was?

A. I don't remember the exact dates. I wouldn't say for sure. Maybe it was.

Q. There had been nothing said up to that time, had there, about organizing a corporation under the laws of another state?

A. Well, it had been hashed over.

Q. When?

A. In Seattle. Mr. Vance, Lloyd Vance was to organize a new company and take over the property and was to operate it.

Q. To take over half of the assets, was it not, not all of them? [248]

A. No; half of the ore, as I remember their contract, and that we were to have the other half and the new company was to do all the mining and treating, and the old company had nothing to do with it.

Q. You say that was at the Seattle meeting?

A. Well, it was in the various meetings we had at Seattle.

Q. The Seattle meetings, the first of them was August 13th, was it not?

A. Well, there was preliminary discussions before the meeting, I know that.

Q. Then you came down August 6th to see Mr. Garbutt. When did you see him?



(Testimony of Russell F. Collins.)

A. Oh, I saw him from day to day. I don't know just the exact dates but I saw him very nearly every day.

Q. You returned to Seattle so as to be back there on the 13th, didn't you?

A. Well, of course, when I was in Seattle I didn't see him.

Q. Then, when did you next see him after the 13th?      A. Well, I came down here after that.

Q. When did you first know that the notice of forfeiture of August 25th was to be put out, was to be issued?

A. I didn't know that until it was issued.

Q. What?

A. I knew nothing of it until it was issued.

[249]

Q. And you did not try to get it relieved, did you?

A. Well, I was hopeful that something could be done to relieve it.

Q. Did you go to see the owners about it?

A. I saw Mrs. Ryan from time to time.

Q. Did you complain to the owners that it was not fair for their agent to be insisting on forfeiture, and, at the same time that he was getting an assignment of the contract?

A. Well, we were between a threat from Vance, and, if you will permit it, the question was: We had a payment coming due in a few months and we had nothing with which to meet it.

(Testimony of **Russell F. Collins.**)

Q. And Vance threatened that he would not put it up?           A. Yes; he said he wouldn't put it up.

Q. That was his threat?

A. Yes; that was his threat.

The Court: In other words, one was forfeiting and the other was refusing to put up any more money; they were both in the same fix, weren't they?

Mr. Abel: Well, hardly, hardly, your Honor.

The Court: Both were putting on the squeeze.

The Witness: That is it. [250]

Q. Anyway, why was the contract of September 22nd made?

A. Well, because we thought it was the best thing we could do under the circumstances for the Mutual Gold and their stockholders. [251]

#### Redirect Examination

Q. By Mr. Hinckle: Mr. Collins, you gave one, or two or three reasons—I don't remember how many—why you preferred to deal with Mr. Garbutt rather than Mr. Vance. Is there any other reason that you know of?           A. Well, yes.

Q. Well, what was that reason?

A. Mr. Vance's general attitude towards the small stockholders of the corporation.

Q. I mean do you know of any specific thing that indicated that?           A. Yes; I do.

Q. What was it, anything he said, or something he did or what?

(Testimony of Russell F. Collins.)

A. After we had practically——

Q. No. Was it something he said, or something he did [253] or what?

A. Well, something he said.

Q. Where was it said?

A. It was said at just south and east of the present site of the new mill, near the pipe line that was being built from the upper tank, or the big tank, down to the mill, the old mill.

Q. What was said at that time? No. Who was there?

Mr. Abel: We object unless we know the time.

Mr. Hinckle: Yes.

Q. Who was there at the time?

A. Just Mr. Vance and myself.

Q. About when was that?

A. As I recall, it was in the fall, about October probably, or November of 1937.

Q. What was said?

A. The question was raised—Mr. Vance said, “To hell with the little stockholders. They have no business being in here.” [254]

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J. E. STIEGLER,

called as a witness on behalf of defendants, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. J. E. Stiegler.

(Testimony of J. E. Stiegler.)

Direct Examination

Q. By Mr. Hinckle: Mr. Stiegler, what office, if any, do you hold with the Mutual Gold Corporation?

A. President.

Q. How long have you been the president?

A. Beginning in June—no. Wait a minute. I was first a director in June, I think, '34, and that fall, I believe, about October of '34.

Q. Are you a director also? A. Yes, sir.

Q. How long have you been a director?

A. Since June, '34.

Q. Are you a promoter of mines that go broke or do you have some other occupation?

A. I am a farmer.

Q. Are you a stockholder also?

A. In Mutual Gold; yes.

Q. About how much stock do you hold?

A. Oh, I think the family has, that is, my wife and daughters and myself, about 100,000 shares, I believe, [266] something like that.

Q. Does the Mutual Gold owe you any money that you have advanced? A. Yes.

Q. About how much?

A. Oh, it is near \$4,000, I think, that I have advanced.

Q. What was that for?

A. \$3,000 of that was advanced in '37, the fall of '37. Mr. Vance wrote me a letter and wanted me

(Testimony of J. E. Stiegler.)

to talk with the directors and try to raise \$6,000, I believe it was, and I put up \$3,000 at that time.

Q. Did you favor dealing with Mr. Garbutt rather than Mr. Vance in the making of this contract of September 2, 1938?      A. I did.

Q. Why?

A. Well, at the time, or while we were—the Lloyd Vance proposition was up, it seemed like there was a lot depended on how much money I could raise from my Yakima friends. On several occasions Lloyd Vance asked me if I couldn't guarantee \$30,000, and then a time or two he asked if I couldn't—I told him I couldn't guarantee anything but I would do the best I could; and a few days before coming down to try and make some deal with Mr. Garbutt—that was in, I think, the latter part of August, '38 or the 1st of September—I received a letter from Mr. [267] Woodworth stating that——

Mr. Abel: Objected to as not the best evidence and ask for the production of the letter.

Mr. Hinckle: Just pass that up. Go ahead and tell in your own words why you preferred dealing with Mr. Garbutt.

A. Well, Mr. Vance had had his chance. He had spent \$30,000—\$50,000 besides what had been taken out down there, and what I had heard about Mr. Garbutt, he had had considerable mining experience, had been successful, and he also had the finances

(Testimony of J. E. Stiegler.)

to equip the mine properly and that was the big consideration, I thought.

Q. Did you come down to Los Angeles to see Mr. Garbutt?           A. Yes, sir.

Q. Did he ask you to come down?

A. No; I don't think he did.

Q. Where did you talk with him?

A. At his office.

Q. Anybody else there?

A. Yes; Mr. Grill, Mr. Russell Collins and Mr. Ferbert, I believe.

Q. Did he ever ask you to make a deal with Mutual—to help him make a deal with Mutual?

A. No.

Mr. Anderson: May I inquire of counsel if he is now eliciting what transpired at this meeting in Mr. Garbutt's office? If so, we would like to know the date. You have [268] said that certain parties were present and now you ask him did he ever do——

The Court: He gave the date the latter part of August, he thought, as near as he could figure.

A. We were down here three days and I believe the contract was signed on the 2nd day of September.

Q. By the Court: You are speaking of the time that the contract was executed as of September the 2nd?           A. Yes, sir.

Q. By Mr. Hinckle: Did you urge this upon Mr. Garbutt or did he urge it upon you?



(Testimony of J. E. Stiegler.)

A. Well, he tried——

Mr. Anderson: If your Honor please, that is a conclusion. I think he should detail what was said by each of the parties at this conference.

The Court: Yes; that is correct.

Q. By Mr. Hinckle: Well, what did you say to Mr. Garbutt, if anything, about making a contract with the Mutual?

A. I don't remember so much what I said to him, but I remember once he stated that he didn't know whether he would go through with this contract or not, but if he didn't he would arrange so that we could pay the sellers on the 1st of November when the \$10,000 became due, and we were quite anxious to——

The Court: No what you were anxious. What was said. [269] About your anxiety, that is a conclusion. What was said?

A. Well, he told us that he would furnish us the \$10,000 and also a payment on installing the high-power line up to the mine. It was to cost \$10,000. I think he said he would furnish part of the money, or something of that kind.

Q. How did you happen to come down?

A. I came down because Mr. Ferbert and Mr. Collins thought we could make some deal.

Q. They asked you to come down, did they?

A. It was talked in the board meeting and the whole board was invited to come down.

(Testimony of J. E. Stiegler.)

Q. Did you ever communicate, yourself, with Mr. Garbutt?      A. No, sir.

Q. Had he ever communicated to you?

A. Before that time?

Q. Yes.

A. No; I am sure he didn't. I am quite sure that he didn't.

Q. When was the first time you ever met Mr. Garbutt?

A. Was here on the last day of August or the 1st of September.

Q. The only information you had about the deal was the information you got from Mr. Ferbert and Mr. Collins?

A. And Mr. Keily. Or more—

Q. Keily? [270]

A. Keily, I think the name is, that was superintendent at the mine.

Q. Was he up north with you?

A. I met him in Seattle.

Q. What was the purpose of coming down?

A. To try and make some—get Mr. Garbutt to take over the operation of the mine.

Q. By Mr. Hinckle: Was anything ever said to you or in your presence at any time by Mr. Garbutt or by anyone in his behalf which you construe to be an attempt to force you into making or attempting to have made a contract?

A. With Mr. Garbutt?

Q. With Mr. Garbutt for the Mutual?

(Testimony of J. E. Stiegler.)

A. No. [271]

Q. Did you ever have any interest in this matter excepting to protect your investment?

A. And to protect the stockholders.

Q. Well, that was your investment? [272]

A. Yes, sir.

Q. You are a stockholder? A. Yes, sir.

Q. Did you have any arrangement whereby you were to receive any outside interests or profits of any kind?

A. No, sir. I might state that I have always stood my own expenses to the mine and to I don't know how many board meetings in Spokane and Seattle, and this trip down here and the trip down here on September 2nd, '38 I stood my own expenses, never handed them in to the company even.

Q. Did you have anything to gain by favoring either the Vance contract or the Garbutt contract, except what you thought was the best interests of the stockholders and yourself as a stockholder?

A. No, sir.

Q. Is this your first mining experience?

A. No. I started out when I was a kid in Alaska. I was up there about 20 years, or 18 years, and it has been in my blood ever since I guess. I have tried to settle down to just farming but I do break loose once in a while.

Q. By Mr. Hinckle: Did you know that Mr. Garbutt paid Mr. Grill's expenses down here on one occasion? A. Yes.

(Testimony of J. E. Stiegler.)

Q. One or two occasions, whatever it was?

A. Yes.

Q. Were you influenced in any way to favor a contract [273] with Mr. Garbutt by the fact that a notice of forfeiture had been given on August 25, 1938 and withdrawn then on October the 15th, 1938?

A. No; I don't think so. However, that note, I was quite concerned over it at the time that we had received it. I think Mr. Abel is the first that told me about it.

Q. Have you ever received any money from Mr. Garbutt for services you rendered him any any way?

A. He bought me a malted milk yesterday, I think. That is all.

Q. That is the first you have received?

A. I believe so. No; he treated me to dinner once before.

Cross Examination [274]

Q. By Mr. Abel: I am now reading from Plaintiffs' Exhibit 16, being a letter dated September 12, 1938, signed by you as president, a letter to the stockholders of the company. That letter called for another meeting to ratify the Garbutt contract of September 2nd? A. Yes, sir.

Q. And in that letter, quoting from that letter:

“A board meeting was held on the 7th day of September, at which the action of the president of the company was ratified and the contract approved by the board, subject to its rati-

(Testimony of J. E. Stiegler.)

fication by the stockholders of the company. The board members voting in favor of the ratification were Mr. Ferbert, Mr. Hickcox, Mr. Grill and Mr. Stiegler. Those voting against were Mr. Woodwoorth and Mr. Vance. The writer was advised that the contract was approved by Mr. Collins, the one director absent. It was the feeling of the writer, as well as the other members of the board voting in favor of the contract, that if it was not accepted the company would become involved in long and expensive [275] litigation with the owners of the property over the attempted cancellation of the contract."

Do you, in the light of that statement, wish to modify what you have testified on that subject when it was within a few days of the action taken?

A. Well, I said I was concerned over the notice of forfeiture when we first got it.

Q. Do you stand by the statements contained in Exhibit 16, or do you now modify them by your testimony?

A. I think I would have to—I will tell you, these letters, I had help in writing out these letters by our attorneys, either Mr. Grill or Mr. Weller helped me in writing out these letters. Now the question you are asking is what?

Q. Is whether you stand by the statement contained in the letter as to what motivated you in the signing of the contract, 10 or 12 days earlier,

(Testimony of J. E. Stiegler.)

this letter being dated the 12th and the contract being dated on the 2nd?

A. Well, I was concerned, of course, about the notice; yes.

The Court: You have not answered the question yet.

Q. By Mr. Abel: I am not asking you whether you were concerned about the notice.

A. The question is what, then, please?

Q. The question is whether you stand by the statements [276] contained in the letter of the 12th instant.

A. What paragraph is that that you are referring to?

Q. I will just mark the paragraph, Exhibit 16.

A. Well, I signed it. I guess I must have approved it.

Q. The question is not whether you signed it. You signed it knowingly, did you not?

A. I read it over first; yes.

Q. After legal advice?

A. Yes; I read it over.

Q. From possibly two attorneys, Mr. Weller, the company attorney of Spokane, and Mr. Grill?

A. I am not sure which one helped with this letter, but I usually was helped by either one or the other.

Q. But the letter was constructed advisedly, with knowledge of its contents, was it not?

A. I presume so.



(Testimony of J. E. Stiegler.)

Q. And the purpose of the letter was to intimate to the stockholders that if the contract was not approved by them litigation would result with the owners, isn't that true? A. Probably; yes.

Q. Did you know that on the very day that the contract was signed with Mr. Garbutt in his office he issued a letter to the Vance Lumber Company—to the Mutual Gold Corporation and J. A. Vance, general manager, being Exhibit 12, insisting upon the forfeiture on the same day? [277]

The Court: Answer the question.

A. If I knew whether this was written? I just don't recall. I believe that—I don't recall. Perhaps I did know that at the time. I don't remember now.

The Court: May I see that exhibit when you are through with it?

Mr. Abel: Yes, your Honor.

The Court: You may proceed.

Q. By Mr. Abel: Your attention is now directed to Plaintiffs' Exhibit 28, being a letter signed by "Chandis Securities Company" and "Alice Clark Ryan" of date October 3, 1938, particularly to the last page of it which I will now read:

"We are not satisfied with the way you have evaded carrying out your contract with us nor pleased with your Managing Director, Mr. Vance's uncandid statement to us that 'you have complied with your contract in every particular', when you well know this is not true and, in view of the many concessions we have

(Testimony of J. E. Stiegler.)

made you in the past we are not pleased by your concealment from us of developments at the mine; nor by the excuse of your manager's attorney that you had no contractual obligation to inform us; nor by his contention that our failure to take action sooner, constituted a waiver of the many breaches of your contract, and we are not at all reassured by your internal dissensions, nor by the [278] threats of litigation amongst yourselves which it appears have been extended to covertly include us.

“As long as this is possible or threatened, you may expect no consideration from us.”

Then another quote:

“We consider your former contract terminated and at an end.”

Were you aware of that letter?

A. Was that letter sent to me or to Mutual Gold Corporation?

Q. To Mutual Gold Corporation, under date of October 2nd (3rd).

A. I perhaps knew of it at the time but I don't recall it now.

Q. You don't recall it?           A. No, I don't.

The Court: May I see it, please?

Mr. Abel: It is on the last page, the particular part.

Q. You are now shown the letter of August 25, 1938, being the cancellation notice of that date.

(Testimony of J. E. Stiegler.)

A. What date?

Q. Exhibit 11.

A. I don't know whether I have seen this before or not. I don't believe those letters were sent to me. I live over there in Naches. The home office is in Spokane.

Q. At that 27th of August, that meeting of the board of [279] directors at the Vance Hotel, was not that letter, Exhibit 11—

A. It might have been. I don't know.

Q. —exhibited, read and thoroughly discussed?

A. That or some other one. I remember of some discussion over it; yes.

Q. The letter of forfeiture of August 25th?

A. What date would that be?

Q. Two days later. A. Two days later.

Q. On the 27th of August?

A. It is very likely I did.

Q. Your attention is directed again to Exhibit 11, particularly the second part of it, and you are asked to state what, if anything, was done in the way of negotiation to reinstate the contract before the assignment to Garbutt of the contract itself on the 22nd or 21st day of September, 1938?

A. What had been done to—

Q. What, if anything, did you or did the board do to get the contract reinstated between those days, other than to make the sell-out to Mr. Garbutt? A. I don't remember.

(Testimony of J. E. Stiegler.)

Q. Isn't it true that there was nothing done?

A. These notices were directed to Mr. Vance as general manager, and I think that you answered those letters your- [280] self, Mr. Abel.

Q. And when they came to your attention, when this notice of August 25, 1938, Exhibit 11, came to your attention you, as president of the company, did nothing?

A. You was taking the matter up yourself, I think. You replied for Mr. Vance, as I remember.

Q. The question is whether you, as president of Mutual Gold——

A. No; I didn't.

Q. —took action of any kind?

A. No; I didn't because you was taking care of that. [281]

### PLAINTIFFS' EXHIBIT 90

\* \* \* \* \*

### MINUTES OF ANNUAL MEETING OF STOCK- HOLDERS OF MUTUAL GOLD CORPORA- TION.

February 1, 1939

The stockholders of the Mutual Gold Corporation met in regular annual session at the office of the Company, 401 Fernwell Building in the City of Spokane, State of Washington, on Wednesday the 1st day of February A. D., 1939 at the hour of 11:00 o'clock A. M. pursuant to call and notice.

The meeting was called to order by President

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

J. E. Stiegler who asked Vice President E. D. Weller to preside, Secretary E. Fuson acting as recording officer.

The Chair appointed Mr. C. T. Orr, Mr. R. P. Woodworth and Mr. E. D. Weller as proxy committee to check and report on the proxies.

The office of the company being inadequate to accomodate the stockholders, the meeting, on motion duly made, seconded and carried was adjourned to be reconvened at the office of the Company in the Assembly Room of the Old National Bank Building, Spokane, Washington at the hour of 2:00 o'clock P. M.

The meeting reconvened at 2:00 o'clock P. M. in the Assembly Room of the Old National Bank Building, Spokane, Washington pursuant to adjournment, the same officers being in the chair.

Roll Call showed the following results:

Present in Person.....	164,114 shares
Present by proper proxy.....	2,149,342 shares
Total shares present and entitled to vote.....	2,313,456 shares
Total shares outstanding.....	2,641,182 shares

The proxy committee reported that the proxies were in regular form in the amounts as above stated, and upon motion duly made, seconded and carried, the report of the proxy committee was accepted and approved.



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

The Secretary presented a copy of the Notice of the Annual Meeting pursuant to which the meeting was held with affidavit of mailing notice to each and all stockholders of record more than 10 days prior to the date fixed for the meeting as provided by the by-laws of the company. The same being in regular form and there being no objections thereto, the Chair declared the meeting was regularly and duly called and open for business.

The Minutes of the last meeting of the stockholders held August 6, 1938 were read and on motion duly made, seconded and carried, were approved as read.

The Chair then announced the next order of business was the reports of officers of the company. Mrs. E. Fuson, Treasurer made a report of Mr. Garbutt's expenditures in behalf of the Mutual Gold Corporation for a period from September 31, 1938 to January 16, 1939 inclusive, showing a total expenditure of \$50,130.97.

Mr. Abel requested a balance sheet and was informed that a financial statement later than the Trial Balance prepared as of September 30, 1938 was not available at this time.

Mr. Grill read telegrams from Mr. Garbutt and Russell Collins indicating that every effort was being made to advance the interests of the stockholders of Mutual Gold stock.



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

There was some discussion from the floor, principally by Mr. Abel addressed to Mr. Grill, in regard to the status of the Mutual Gold Corporation. After the discussion was becoming rather lengthy the chair stated the meeting was now open for nomination of seven directors to serve until the next annual meeting of the stockholders and until the election and qualification of their successors.

Mr. Grill nominated J. E. Stiegler, G. H. Ferbert, Tom L. Wyckoff, F. T. Hickcox and W. L. Grill, said nominations being seconded by C. T. Orr. Mr. Abel nominated Mr. Lloyd J. Vance and R. P. Woodworth, said nominations being seconded by A. P. Bateham.

Mr. Woodworth nominated Clarence Colby and Mr. Hurd nominated Mr. Joe Vance, however, both nominations were withdrawn.

There being no further nominations, Dr. I. S. Collins moved that the nominations be closed. Said motion was duly seconded and unanimously carried.

On motion duly made, seconded and carried, the Secretary was instructed to cast the unanimous ballot of all shares present and entitled to vote for the directors so nominated, and the Secretary thereupon cast 2,313,456 votes for the said directors. The Chair thereupon declared that J. E. Stiegler, G. H. Ferbert, Tom L. Wyckoff, F. T. Hickcox, W. L. Grill, Lloyd J. Vance and R. P. Woodworth were

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

duly elected as directors to serve until the next annual meeting of the stockholders and the election and qualification of their successors.

A motion was then made by Dr. R. A. Munro that a complete report of the conditions of the Mutual Gold Corporation be furnished individually to each stockholder and that same be made as soon as possible after this meeting and mailed to each one.

Mr. Grill then stated that the company was short of funds to cover the cost of having such a report compiled, printed and mailed out, whereupon Dr. Munro added to his motion "as soon as funds are available". Said motion was duly seconded.

Mr. Abel then moved an amendment to the motion that there be also supplied a balance sheet which shall show the assets and liabilities of the company and the income and expenditures for the past year. Said motion as amended was duly seconded, voted upon and carried.

Mr. Orr then made a motion that a vote of thanks be given to the directors for what they had done during the past year and that the stockholders let them know they are behind them and ratify their actions in the past year. The motion was duly seconded after which there was considerable discussion. A standing vote was then taken and a majority of those present in person voted against said motion.

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

Mr. Grill then made the following resolution and moved its adoption:

“Whereas, on Saturday, the 17th day of December, 1938, the board of directors of this company, at a special meeting called and held at said time, authorized and directed the President and Secretary of this corporation to execute a contract for and on behalf of this company with Frank A. Garbutt and to deliver said contract to said Frank A. Garbutt, which said contract relates to the equipment, operation and handling of the company's property near Mono Lake, California, all as more fully set forth in said contract; and

“Whereas, the said contract has now been fully executed by all of the parties thereto and delivery thereof made by the respective parties; and

“Whereas, the stockholders of this company at a meeting held on or about the 6th day of August, 1938, duly authorized and directed the board of directors to deal with said property as provided by a resolution passed at said meeting; and

“Whereas, the board of directors has reported the execution of said contract to this meeting; and

“Whereas, it is for the best interests of

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

said company that said contract be ratified, approved and confirmed; now, therefore,

“Be It Resolved, that the action of the board of directors in authorizing the execution of said contract with the said Frank A. Garbutt and the execution and delivery thereof by the President and Secretary of this company and the said contract be and the same is hereby ratified, approved and confirmed; and

“Be It Further Resolved that the board of directors of this company be and it is hereby authorized and directed to cancel, renew and alter said contract with the said Frank A. Garbutt as from time to time in its discretion it shall deem necessary or advisable for the best interests of the corporation.”

Said motion was seconded by Mr. C. T. Orr after which there followed considerable discussion. A vote was then taken by calling the roll with the following results:

Name	Shares voting FOR	Shares voting AGAINST
J. E. Stiegler.....	1,447,009 $\frac{1}{3}$	
J. A. Vance.....		11,134
C. H. Colby.....		13,067
F. Z. Hurd (gone).....		
Tom Wyckoff .....	5,700	
George Barner .....		2,399 $\frac{1}{3}$
W. H. Abel.....		5,000
R. P. Woodworth.....		83,116 $\frac{1}{3}$
Lloyd Vance .....		447,781

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

E. D. Weller.....	6,260	
A. P. Bateham.....		184,756
Fielding McClaine .....		25,233
Dr. Abrams (gone).....		
J. W. Maxwell.....		60,000
O. C. Moore (voted under protest)...		8,667
	<hr/>	<hr/>
Total shares voting.....	1,458,969 $\frac{1}{3}$	841,153 $\frac{2}{3}$

There being no further business, Mr. Grill made a motion to adjourn, said motion being duly seconded, voted upon and carried.

**E. D. WELLER,**

Vice President and Chairman.

**E. FUSON,**

Secretary & Recording Officer.

February 1, 1939

The Committee finds that there are present in person and qualified to vote at this meeting;

In Person ..... 164,114

By Proper Proxy .....2,149,342

Making a total number of shares present and qualified to vote of 2,313,456, out of an outstanding number of 2,641,182 shares.

Respectfully submitted,

Proxy Committee

**R. P. WOODWORTH**

**C. T. ORR**

**E. D. WELLER**



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

AFFIDAVIT OF SERVICE OF NOTICE OF  
ANNUAL STOCKHOLDERS' MEETING of  
MUTUAL GOLD CORPORATION.

State of Washington,  
County of Spokane—ss.

E. Fuson, being first duly sworn on oath, deposes and says that at all times herein stated and included, she was and now is above the age of 21 years and Secretary of the Mutual Gold Corporation, and as such officer, on the 20th day of January, 1939, a copy of the attached notice of meeting, copy of attached letter of J. E. Stiegler, President, dated January 14, 1939, copy of attached 'Progress Report' of Frank A. Garbutt dated January 8, 1939 and a copy of the attached proxy, properly enclosed and directed, with postage prepaid, was by her mailed to each stockholder of record of such corporation at his address as shown by the books of the company.

E. FUSON,  
Secretary.

Subscribed and sworn to before me this 25 day of  
January, 1939.

E. D. WELLER,  
Notary Public in and for  
the State of Washington,  
residing at Spokane.



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

PROXY

Know All Men by these Presents: That I, the undersigned, do hereby constitute and appoint J. E. Stiegler or in the event of his inability to act, F. T. Hieckox or W. L. Grill, my true and lawful attorney to represent me at the annual meeting of the stockholders of Mutual Gold Corporation to be held on the first day of February, 1939, at eleven o'clock A. M. at the office of the company at 401 Fernwell Building, Spokane, Washington, and do hereby authorize and empower him to vote at said meeting and at any adjournment thereof for me and in my name and stead upon the stock then standing in my name on the books of said company, and I hereby grant my said attorney all the powers that I should possess if personally present at said meeting hereby revoking all former proxies by me made.

Witness my signature this.....day of  
January, 1939.

.....

Witnessed By:

.....

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

NOTICE OF ANNUAL MEETING OF STOCK-  
HOLDERS of MUTUAL GOLD CORPORA-  
TION.

Notice Is Hereby Given that the annual meeting of the stockholders of Mutual Gold Corporation will be held at the office of the company at 401 Fernwell Building, Spokane, Washington, on February 1st, 1939, at eleven o'clock A. M. in accordance with the by laws of said corporation for the purpose of electing a board of directors for said corporation for the ensuing year, for hearing the reports of officers of said corporation and for the transacting of any other business that may properly come before said meeting.

MUTUAL GOLD CORPORATION,  
By E. FUSON,  
Secretary.

MUTUAL GOLD CORPORATION  
401 Fernwell Building  
Spokane, Washington

January 14, 1939

To the Stockholders of Mutual Gold Corporation:

You will find enclosed herewith notice of Annual Meeting of the stockholders of the company, to be held on the date fixed by the by-laws.

You will also find enclosed herewith latest progress report of Mr. Frank A. Garbutt. You will

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

note from this that Mr. Garbutt has expended \$50,253.87, up to January 8, all of which expenditures were necessary before the property could be put in operation.

The drain tunnel to the sink and the installation of the tailings line were necessary to keep the water and the tailings out of the creek which runs through Mrs. Cunningham's property. An effort was made by Mr. Garbutt to make a satisfactory arrangement with Mrs. Cunningham to use the creek for water and tailings disposal, but without success. During a period of prior management a disposal line from the mouth of the drain tunnel to the sink was constructed at a considerable expense, but it was not properly constructed, thus necessitating a new installation. The new installation is now constructed at a proper grade and should cause no further trouble to the company.

The mine was ready to commence operations several days ago, but at the last minute it was found that the water pipe leading to the property was frozen at some point and the getting of this line in operation occasioned some delay. However, the mill began operating on January 12, 1939.

Mr. Garbutt has kept the directors fully informed of what is transpiring at the property, and has outlined to them from time to time for their approval the work which he is undertaking. This

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

is something which has never occurred before. Mr. Garbutt is also making a study of the ore and the property, so as to determine the proper equipment for obtaining the best recoveries from the ore. He is doing this in a very thorough manner and I have no doubt that when he finally recommends what equipment should be placed upon the property for this purpose, it will be successful.

It has been a real pleasure to the writer, and I feel also to the board, to have a man in charge of the operation who not only knows what he is doing, but who does not hesitate to do it when he finds out what should be done. Mr. Garbutt realizes better than anyone else that the property will have to have the most economical kind of operation to be successful, and you may rest assured that it will have just that kind of operation. He was severely handicapped owing to the shortness of time which he had to attempt to get the property in operation this year. I may also frankly say in this connection that I doubt very much if we could have found another person in the United States as well qualified in every respect to handle this property.

As you are doubtless aware, a number of months this year were lost, during which the board was considering the offer of the Vance interests and the one made by Mr. Garbutt. After long delay and much opposition, the board finally concluded that

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

it would be for the best interests of all the stockholders to accept Mr. Garbutt's offer, which was reduced to a contract. This contract was more than lived up to by Mr. Garbutt. For various reasons, however, he desired to terminate the contract and a new one has been prepared which has met the approval of the board but has not yet been executed and delivered to the company by Mr. Garbutt. We should have some word on it before the stockholders' meeting.

The company has a serious controversy with Mr. Vance. When the deal with Mr. Garbutt was closed, Mr. Vance insisted upon the immediate payment of the production notes, as well as certain advances which he claims to have made on the company's behalf. Of course it was impossible to make any immediate settlement. He later modified his demands and insisted upon said advances being repaid within one year and the production notes at a later date. No settlement could be made along this line until the company knew when it might have sufficient resources to take care of any settlement which it might make. If such a settlement were made and the company unable to meet the obligations when they fell due, then the interests of the stockholders would be completely wiped out, and this is what the directors are desirous of avoiding. Whenever Mr. Vance is willing to make an arrangement which



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

will not jeopardize the interests of the stockholders, the present board of directors will meet him more than half way.

You will find enclosed herewith a proxy, which is self-explanatory. If you desire to continue the present management of the company's affairs and the present board, which has and will work for the best interests of all of the stockholders, kindly sign the enclosed proxy and return to the office of the company. If, on the other hand, you feel that the present board has not worked unselfishly and for your best interests, do not hesitate to vote for anyone you desire, because we are all working for one end, and that is to make the property and the company a success.

You may be informed prior to the stockholder's meeting that many things may occur detrimental to your interests because of the arrangement made with Mr. Garbutt. In this connection please bear in mind that certain statements were made to some of you at the time the contract was first entered into as to what would happen if the contract was made. Certainly none of these things has happened and you are now in a position to judge performance against any assertions of what may occur in the future.

It is the writer's personal opinion, in conclusion, that the stockholders will be highly satisfied with



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

Mr. Garbutt's operation during the coming year and that they may expect a fair and square deal from him.

Yours sincerely,

MUTUAL GOLD CORPORATION,

By J. E. STIEGLER,  
President.

FRANK A. GARBUTT  
Suite 712 - 411 West Seventh Street  
Los Angeles, Cal.

January 8, 1939.

To the Board of Directors,  
Mutual Gold Corporation,  
Mr. J. E. Stiegler, President.

### PROGRESS REPORT

My last report was made to you November 22, 1938. Since then, however, your Board of Directors has been kept in close touch with all operations by means of daily air mail letters to your President at Naches; your director, Mr. Grill, at Seattle; and your Director, Mr. Ferbert, at Long Beach, together with copies of much of the routine correspondence involved.

Director Russell Collins has kept in close touch by personal contact, so that your Board has been

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

fully informed at all times and has been consulted in advance of any work contemplated and their advice sought and carefully considered.

I feel, and I think you agree, that your Board of Directors are functioning one hundred per cent in controlling and conducting your Company's affairs, being enabled to do so intelligently by the completeness and promptness with which all information reaches them.

It pleases me to state that the Company's business as far as I can see, is gradually getting into a better and sounder condition and, although there are innumerable things to do to protect your titles and develop your property that they are being given proper attention as expeditiously as opportunity affords.

Among other things referred to are:

Your Relationship With The Owners. Although you made your last payment promptly you are still in default as to many material things, some of which, as, for example, failure to impound your tailings can not be corrected. While not waiving these various defaults the owners have shown a disposition to be lenient and, although I can not guarantee it, am hopeful that we will have no serious trouble with such matters, this particular one being dependent upon what damage may occur to parties owning property below us.

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

Titles To Your Holdings. It is important that some of your claims should be patented without further delays. This is being studied. It is to some extent dependent upon the weather as survey by the U. S. Deputy Surveyors are amongst the necessary steps. There are also some matters of policy to be considered.

The title to your water is going to be questioned and the legalities involved are being carefully examined into. We have obtained copies of the briefs from the attorneys who tried some of the City's cases who were my attorneys for over twenty years and the law and the facts are being briefed for our protection.

Road Development. For twenty-five years the operators of this property, including ourselves, have been wasting money in hauling over and attempting to maintain impossible roads and prohibitive grades.

I am not discussing here the developing of the Mine itself nor the planning of a proper process nor the building of a suitable mill. These subjects are too complicated to be determined finally with our present knowledge.

As you know, they are being studied intensively and work is being expedited as rapidly as business prudence and good judgment will permit. You are completely familiar with all of the considerations governing this but it is appropriate to say that I

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

am not displeased with the progress made with our metallurgical and physical problems.

Before a study of these matters can be completed it will be necessary to operate the property and ascertain a great many things not now known in order to secure the best approximate results both in operation and in initial expenditure. This work is receiving my best attention as you are completely aware. We have tied ourselves to no one engineering firm but are consulting the best technical and operating skill in the United States and in the final analysis will be governed by our own knowledge and not by any individual opinion for, while our operations are small, they are vital to us and we can not afford to take any chances.

Now as to details to date:

1. Our power line, as previously reported, is complete, as is also another power line 1,500 feet long, with butt-treated poles to serve the four pumps for our tailing disposal line.

2. A transformer of our own for electric lighting and a lighting system have been installed to replace the inadequate and expensive contraption we had.

3. We have completed the installation of a tailings line about 2,600 feet long to the Federal Site and built a dam there; thus affording a safe place for the disposal of our tailings and insuring a future compliance with this provision of our con-

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

tract. While this operation will be temporarily troublesome and expensive it is the only possible procedure that is entirely safe that is open to us under present conditions.

4. The 2,800-foot, 8-inch pipe line from the drain tunnel to "the sink" for the disposal of our "red" mine water has been completed and insofar as possible, protected. Its upper end is 16-inch. Mr. Sturgeon came well within his estimate on the cost of this installation.

5. Considerable trenching has been completed on the hill side to protect the drainage tunnel from continued damage by surface water and, in Mr. Collins' opinion, to minimize the chance of liability from the unimpounded tailings. I have no worthwhile opinion on this.

6. The installation of the electric hoist is completed and my advice is that it is operating satisfactorily.

7. The cage is also operating satisfactorily in the shaft.

8. The new mine cars are on hand.

9. The compressor is complete.

10. We are placing the one-inch compressed air line throughout the mine with 2-inch galvanized pipe.

11. The old stamp mill has been completely overhauled. It is ready to run. I expect trouble with it,



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

especially its ore elevating system which was so impossible before.

If this mill stands up, I have a plan for utilizing it for secondary crushing in the future which will salvage a part of its cost, in which case it will be further remodeled in the spring. Nothing but a trial can determine this.

12. Compressor and Hoist house is complete.

13. Heaters, as before reported, are installed.

14. All payrolls have, of course, been met promptly.

15. An intensive study of our metallurgical and operating problems has been and is being made and I am pleased to report substantial progress and the accumulation of much reliable information.

16. Preliminary surveys have been made by competent engineers of new roads, and their feasibility at a reasonable cost is assured. The construction, however, must await spring and the thawing of the ground. Possibly \$2,500 or \$3,000 will cover this cost.

17. We have been favored so far by a very open winter. We can not haul in the daytime but can haul at night when the ground is frozen.

18. Last week we put about 60,000 feet of mine timbers on the hill.

19. New jack hammers have been bought and received.



(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

20. I have bought and delivered to the mine supplies consisting of fuel oil, coal, carbide, steel, track, provisions, drills, explosives, equipment, etc., and barring accidents and after the usual adjustments we are ready to run and I am very much in hope we will be able to run throughout the winter. In fact, I expect it. It will enable us to gain much needed information.

We have spent \$50,253.87 to date and I do not believe \$500 of this has been wasted. On the other hand I have saved the Company more than ten times this amount that I know of by close personal attention to detail. Of this amount \$10,000 was for your payment to the owners; \$11,000 for payment for your major power line; \$7,220.72 for consumable supplies for winter operations, and \$14,274.37 for equipment such as compressor, hoist, pipe lines, auxiliary power line, mill motors, lighting plant, mine cars, new jackhammers, electric wiring, etc.

In concluding allow me to thank you gentlemen for your splendid cooperation and understanding. Your suggestions and advice have been timely and excellent and it is a pleasure to work with people who are familiar with the situation and who do not think that all you have to do is to buy something called a mill and start paying dividends.

The landscape is dotted with that kind of mills that never earn a dividend.

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

I wish you could find some way of acquainting your stockholders with the conditions, what you have accomplished and what you have gone through in the past for their sake. A few words on paper cannot begin to tell this story.

The devotion of Russell Collins to the interests of the Mutual is touching in the extreme. I know that he has gone hungry and cold in his endeavors to pull them out of the hole they had, through no fault of his gotten into.

Your President and also Director Ferbert have shown a willingness to sacrifice not only their time but also their money to benefit the stockholders and this, may I state, is in such marked contrast to the usual corporation director who is generally concerned only in protecting his own interests that it has furnished the inspiration and the incentive to me to carry on at a time when the association promised to become an unpleasant one.

Nor can I close without paying tribute to the faithful cooperation of our men at the mine and especially our underground man, Mr. Sturgeon, and our mill man, Mr. Haley. They have worked hard and faithfully for the Company and it is due to their devoted efforts that we are able to run this winter.

For example, our eight-inch pipe line was finished, well under Mr. Sturgeon's estimate of cost, on a

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

day when six inches of snow was blown off of the mountain by a howling blizzard.

They have given me at all times faithful cooperation even when perhaps they did not agree with what I was doing and I can depend on them to voice their independent opinions and then do their best to prove that they were wrong if I over-rule them. More than this, no manager can ask of any head of a department.

We all know the irreparable loss that the death of Mr. Keily was to the enterprise and to all of us.

While he had not been with me for several years on account of my retirement from mining, he has been in my employ without missing a pay day for 17½ years during which time he never received less than \$300 per month and expenses.

Mr. Keily was a mining engineer of unusual ability in addition to being a practical miner and it was with a heavy heart that I consented to go on with you when he passed away for I had no hallucinations about the trouble and detail involved.

That with your cooperation this work bids fair to become more of a pleasure than a burden is the highest compliment I can pay you and I am endeavoring to so arrange your affairs that if anything happens to me that you would not be adversely affected.

In conclusion, may I sum up by saying that with economical and disinterested management and by

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

building up an efficient and loyal organization we have a fair chance of success. You may depend upon my best endeavors.

I have heard of efforts being made by unknown parties to buy stock cheap. I wish you could find some way to advise your stockholders to hold on to their stock. My interests are not for sale.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

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Q. By Mr. Abel: Mr. Stiegler, the contract of September 2nd was signed subject to approval by the stockholders at a meeting called for the purpose?

A. I think that was the understanding; yes. I believe so.

Q. And the meeting was called for September 24th? A. Yes.

Q. Why wasn't it held?

A. Well, I took that up probably with our attorneys and they told us, or told me, that there was no use to go out for more authority; the stockholders had given us all the authority that they could give us, or words to that effect. That is my understanding, anyway.

Q. Did you have that opinion in writing?

A. Mr. Weller was present at a meeting, I think in Seattle. I don't know. I don't recall whether

(Testimony of J. E. Stiegler.)

(Plaintiffs' Exhibit 90 continued)

he wrote me a letter to that effect or not. He probably did, too. Mr. Weller was our attorney.

Q. And Mr. Grill, an attorney, was on the board?

A. Yes; was with us. Yes, sir. [284]

Q. When did you commence to tell people that the assets of Mutual Gold had been transferred to a corporation organized by Mutual Gold Corporation?

A. I don't remember. I didn't hold anything back from any of my friends around my section there. They were all informed. [285]

#### Redirect Examination

Q. By Mr. Hinckle: Mr. Stiegler, did you favor making the contract of December the 17th, 1938, which is the only one now in existence?

A. Yes; I think I did.

Q. With Mr. Garbutt?

A. I think I did; yes. I might—may I explain something there?

Q. All right.

A. I think—I don't remember just what the question was, what I wrote, but Mr. Grill or Mr. Ferbert and some of them, we were thinking of coming back down to Los Angeles again and instead, why, we decided that the thing to do was to send Mr. Grill down: and that was the time, I think, Mr. Grill made that trip by himself.



(Testimony of J. E. Stiegler.)

Q. Did this notice of forfeiture which had been given in August and which was withdrawn in October influence you to approve the contract in December?      A. I don't think so.

Mr. Hinckle: That is all.

#### Recross Examination

Q. By Mr. Abel: Do you know why Garbutt, by the contract of October 31, 1938, terminated two contracts of September 2nd and September 22nd?

A. I have a faint recollection of something there. I [286] think it was something in regard to the tailings that were contaminating the stream where Mrs. Cunningham gets her water. I don't recall just what it was, but something to that effect, I think.

Q. Is it your understanding that the termination contract of October 31st, 1938 was made in order that, for the future at least, Mr. Garbutt would not be responsible for any injury or damage caused by tailings getting into the Cunningham water?

A. Well, that was the old tailing dump.

Q. Well, the point is, is that your understanding for the termination of the contract?

A. Well, I remember that there was something about those tailings. Just when it happened I don't know. [287]

Q. By Mr. Abel: You are now shown your letter, as president of Mutual Gold Corporation, of January 14, 1939, Plaintiffs' Exhibit 43; and



(Testimony of J. E. Stiegler.)

your attention is directed to a particular paragraph there.

A. It is hard for me to read that fine print.

Q. I will read that particular paragraph to you, Mr. Stiegler.

A. All right.

Q. "As you are doubtless aware, a number of months this year were lost, during which the board was considering the offer of the Vance interests and the one made by Mr. Garbutt. After long delay and much opposition, the board finally concluded that it would be for the best interests of the stockholders to accept Mr. Garbutt's offer, which was reduced to a contract. This contract was more than lived up to by Mr. Garbutt. For various reasons, however, he desired to terminate the contract and a new one has been prepared which has met the approval of the board but has not yet been executed and delivered to the company by Mr. Garbutt. We should have some word on it before the stockholders' meeting." Was that a correct statement?

A. I think he more than lived up to his promises; yes. [288]

Q. No. The point is, this is the particular thing: "For various reasons, however, he desired to terminate the contract and a new one has been prepared which has met the approval of the board but has not yet been executed and delivered to the company by Mr. Garbutt."

A. That is probably right.

(Testimony of J. E. Stiegler.)

Q. So, then, on January 14, 1939, the date of Exhibit 43, the contract of December 17th had not been executed?      A. I don't know.

Q. There was no other pending contract, was there?

A. Well, Mr. Grill was taking care of these contracts and one thing and another for us.

Q. Did he prepare this letter?

A. He helped me; yes. I think that he probably did.

Q. Then, if he was taking care of it, have you any reason to question that part of the statement that a new contract has been prepared and has met with the approval of the board, but has not been executed and delivered by Mr. Garbutt?

A. I have no reason to not believe it.

Q. Was there any contract other and later than that of December 17, 1938?

A. It strikes me that there were. I think there was.

Q. A later contract?      A. December when?

Q. After December 17th and prior to January 14th. [289]

A. I don't recall. I don't remember those things. I have no records at home of any of this.

Q. But the point that I am getting out: This letter was sent out, issued by you to the stockholders?      A. Yes.

Q. Under date of January 14th in preparation for the February annual meeting?

(Testimony of J. E. Stiegler.)

A. Annual meeting is right.

Q. Annual meeting, and the stockholders attended that annual meeting, were informed by the president that Garbutt had terminated his contract and a new one had been approved by the board but had not yet been executed or delivered?

A. Probably that is right.

Q. As late as January 14th?                      A. Yes.

[290]

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WILLIAM L. GRILL,

called as a witness on behalf of the above named defendants, being previously duly sworn, was examined and testified as follows:

Direct Examination

Q. By Mr. Hinckle: Mr. Grill, what office, if any, do you hold with the Mutual Gold Corporation?

A. I am a director and, I believe, a vice president, although I am not sure. We have two or three of them.

Q. About how long have you been a director?

A. I don't recall. The minute book will show. I think, in '34, some time along there, or '35.

Q. Do you own any stock in the Mutual?

A. Oh, I own, directly and indirectly, some stock; yes.

Q. Do you know about how much?

(Testimony of William L. Grill.)

A. Oh, sixty, seventy or eighty thousand shares. I don't know exactly how many.

Q. By the Court: You say, "directly or indirectly." What do you mean?

A. Well, through a company.

Q. Do you own any stock yourself?

A. Oh, yes; this stock practically all belongs to me, but it is held in the name of the company. [297]

Q. By Mr. Hinckle: Does the Mutual Gold Corporation owe you any money, not for any services rendered, but that you have advanced?

A. I think for some traveling expenses; yes, directors meetings and something of that kind, for traveling expenses.

Q. Did you favor making the contracts of September 2nd and 22nd with Mr. Garbutt?

A. I did.

Q. Did you also favor making the one that is now in effect?      A. I did.

Q. And that is dated December 17, 1938?

A. I did.

Q. Why did you favor making the first one?

A. Well, that gets back probably to somewhat of a story. The Mutual Gold Corporation was endeavoring to develop this property and it spent a good deal of money. Along in June some time there was a meeting—I think June 25th there was a meeting—called of the directors at the Vance Hotel; and I think at that time, or probably shortly prior

(Testimony of William L. Grill.)

to that, we had learned that Mr. Vance had employed a Mr. Cole to go down and make an examination of the property. This report was made available at that [298] meeting and it was reported by Mr. Vance that it would be necessary to organize a new company to take this thing over, to raise the money to fully develop it and equip it with a larger plant; and the proposition first submitted, I thought, was unfair to the small stockholders, and if my recollection is correct, it was a matter of a deal where the Mutual would retain a 40 per cent and the new company would get 60 per cent, and in addition to that, the advances made by Mr. Vance and the other stockholders, Mr. Ferbert and Mr. Stiegler, would get production notes plus stock as a bonus, the same deal that the \$30,000 was raised, in which in effect nothing was paid for the stock, and the prior stockholders had paid from 6 to 7½ cents a share for their stock. Well, the discussions in that meeting—there were modifications made at that meeting or subsequent meetings.

Mr. Abel: Pardon me. What meeting is this now?

A. I think that is in June, 1938, June 25th, if my recollection is correct. I would not be positive because I do not attempt to remember these dates. And at that meeting or the next meeting we discussed the matter of getting other offers, not merely accepting one, to see what we could do; and there was discussion of a Stone offer by Mr. Stiegler. Mr.



(Testimony of William L. Grill.)

Stone had made a prior offer which had not met with the approval of the board and Mr. Vance. I think I suggested that they attempt to get the Sunshine [299] Mining Company to become interested and this thing delayed until it could be presented. And I believe that Mr. Vance and Mr. Lloyd Vance and several—I was not present—went over and contacted the Sunshine Mining Company and they were not interested, naturally, because of the way the matter was presented, I think, and probably for other reasons; and all of this time the directors were attempting to get some deal. Mr. Vance's deal was there pending and the minutes show that it was recommended to the stockholders because there was no other proposition then pending. Mr. Collins told me and, I think, the other members of the board, that he was going to California to see if he could not get some deal down here. He did not state who he was going to see. I believe he met Mr. Ferbert here or went down with him; and I think the first intimation of some deal came to that stockholders' meeting in Spokane. Mr. Ferbert and Mr. Collins said that they had interviewed, I believe Mr. Garbutt, and that there was a possibility of his making some deal.

Q. By Mr. Abel: When was this? Pardon me.

A. That was in that meeting of August 8th in Spokane, 1938, about that time. That is my recollection, although I am not positive about it. And



(Testimony of William L. Grill.)

I believe that a wire was sent about that time to Mr. Garbutt so we would have something in writing; and I think some answer came back which was given to the various members of the board and that was [300] the reason for the resolution being put in the form in which it was, to accept any other deal which might present itself.

The direct question, to answer that question asked, I had been somewhat familiar with the operation. I think I had made one trip up to the mine by that time, and possibly two trips, and my opinion was or conclusion that I had, and the statements that I made to the board and Mr. Vance, I believe, too, and to his son, that Mr. Vance was not a mining man, and that even if he employed one he would not follow his advice and would run it to suit himself. And chiefly for those reasons I was interested in attempting to get a mining company probably in there with plenty of means to develop this property, someone who was capable and knew the business and had means to carry it through. If we had to go outside of the Mutual Gold, why, I wanted to get into good strong hands and capable hands, that is, so far as I am concerned.

Q. By Mr. Hinckle: Were you influenced to favor the contracts of September, 1938 by notice of forfeiture?

A. Not so far as I was personally concerned; no. I was not influenced by it because I don't get

(Testimony of William L. Grill.)

alarmed, like possibly some business men do, by notices of that kind; and I was not alarmed by the threats made in these meetings of litigation by Mr. Vance if his deal was not made, either. That is not particularly in response to his question, but [301] I was not influenced by either.

Q. You were not influenced, I take it, then, by the notice to favor the contract made, or at least dated, in December, 1938, the one that is now in existence?

A. No; that would not have completely influenced me until——

Q. By the Court: Well, would it influence you at all?

A. I would say it did not influence me.

Q. By Mr. Hinckle: Have you been paid anything, other than some expenses, by Mr. Garbutt in connection with this?

A. I didn't consider Mr. Garbutt paid me any expenses. He advanced the money for Mutual. If it had been from him I would feel I should not have accepted it.

Q. Have you been paid anything for legal services rendered to Mutual?

A. Not by any source; and I have paid part of my own expenses. If I felt I could get someone everyone knew about and told Mr. Stiegler in those cases, as an advance for Mutual, to partly pay my expenses I got it.

(Testimony of William L. Grill.)

Q. Whose idea was it, if you know, that the Mutual Gold Corporation should be represented on the board of directors of the Log Cabin Mines Company?

A. Well, I think that in discussion in the board meeting it was at least my idea, and I think the contract might contain it, that we should have full minority [302] representation on the board.

Q. You still feel that way, do you?

A. I have no question about it. Under the cumulative voting system we are entitled to it legally.

Q. Did Mr. Garbutt agree to that when it was suggested to him?

A. He had no objection and I think the laws of the state provided for it, anyway.

Q. When did you first meet Mr. Garbutt?

A. Well, there was a resolution of the minutes that shows there. The time these contracts were being considered the board passed a resolution authorizing the members of the board to go down and meet him to consider this thing. The minutes show that I was going there as the attorney, also as the director, and I met him when I arrived here some time the latter part of August or first of September.

Q. And is that the time that you finally ended up in the contract of September 2nd? Is that the first time you ever met him? [303]

A. That is the first time I ever met him personally, ever met him.

(Testimony of William L. Grill.)

Q. Is it the first time you ever had any business dealings with him?

A. No. I talked to him over the phone about this contract—or not about the contract, but about the situation.

Q. By Mr. Hinckle: Did you know, Mr. Grill, about the suit that was filed in the City of Los Angeles in the Superior Court by the Log Cabin Mines Company against the Mutual Gold Corporation to quiet the Log Cabin Mines Company title to this contract dated July the 13th, 1938?

A. Yes. I have—— [304]

Q. By Mr. Hinckle: Was a meeting of the board of directors called and held at which the question of whether or not to defend the suit was considered?

A. Yes; there was a meeting called at which the matter was presented to the board, and the minutes so show the action taken by the board of the Mutual.

Q. By Mr. Hinckle: Did this suit follow or precede the filing of a similar suit by A. P. Bateham and others to quiet title in the State of Washington?

A. Well, I don't know the time the Bateham suit was filed; but it is my recollection that it followed it, and I don't think there is any question about it.

[306]

#### Cross Examination

Q. When did you first become aware of the August 25, 1938 notice of rescission?

A. I can't answer that, but I believe it was

(Testimony of William L. Grill.)

brought [307] up in one of the directors' meetings. It might have been given to me outside of that. I don't recall now.

Q. And you were present upon the 2nd of September when the contract of that date was signed?

A. Well, I was—that is my recollection.

Q. Did you negotiate the contract?

A. Well, I was present when Mr. Stiegler was there, Mr. Ferbert, and I believe Mr. Collins and myself. [308]

Q. Was the contract drafted by the time you arrived?

A. I think there had been a contract form submitted to us. It is my recollection there had been a form submitted. Whether that had been sent up or not, I don't remember; but it is my recollection that there was one when we came down.

Q. Was it modified in any particular?

A. Yes; in some few particulars it was modified.

[309]

Q. How long did it take to negotiate and draft the contract?

A. Well, we spent at least a morning going over these, or a half day at least, going over all the items that we had in mind.

Q. What were they?

A. I have told you I don't recall them at this time. Maybe during the course of this examination they will come to me. There were two or three things



(Testimony of William L. Grill.)

there. One comes to me now, the matter of something in the contract so that it could not be sold out from under us; and I think there was some modification of that which would give us certain rights to take this situation over. Then there was something taken up with reference to voting, the matter of full minority representation. I don't remember whether I was fully aware of the California law at that time, but I think I either looked it up there before I came or after I arrived, and whether that was in the contract I don't know, but that was one of the things I wanted to be certain about. [310]

Q. What, if any, consideration was given to the subject of the creditors of the Mutual Gold at that time?

A. Well, there was considerable given that first meeting. The chief creditor that we were disturbed about was Mr. Vance with his open accounts, and we arranged with Mr. Garbutt to borrow, or he would borrow the sum of \$25,000.

Q. Was that embodied in the contract?

A. No; that was not embodied in the contract but I think there is something in the minutes, a report made in the minutes of Mutual, which, if you will look through, you will find.

Q. But that was a resolution trying to get \$25,000——

A. Well, we stated——

Q. —which was refused, wasn't it?

A. If you will let me finish, I will tell you. You asked first, and I will tell you. He called up the



(Testimony of William L. Grill.)

bank there in our presence and asked for a loan of some \$20,000 or \$25,000.

Q. What date was that?

A. What is that?

Q. What date was that?

A. I can't tell you the date. During the course of these negotiations on this contract.

Q. On this contract of September 2nd?

A. That is my recollection. [311]

Q. Yes.

A. And someone he knew in the bank, and the banker said there was some meeting and he would have to call him back; and then he got some call back and said the loan was all right and we were to put up our stock, our half interest in the stock as security so we could——

Q. Half interest in what stock?

A. In the company to be organized.

Q. That was never organized, was it?

A. It was organized—Log Cabin Mines was organized in the first instance by Mr. Garbutt.

Q. Now you are shown Exhibit 13. Please show that part of the contract which has to do with taking care of the creditors of Mutual Gold.

A. Well, I have said—if it does not appear in here, and I haven't read it for some time—just as I have testified to you, the only creditor that we had any concern about was the open account of Vance's.

(Testimony of William L. Grill.)

Q. No. The point that I am trying to make is this: That there was at or about the time of the execution of this contract of September 2nd a discussion about Mutual Gold creditors, and when the contract was executed it was silent on the subject? A. I believe that is correct.

Q. And no provision made for creditors.

A. I believe that is correct, in the contract, to the [312] best of my recollection, without reading it.

Q. Turn to the minute about trying to borrow \$25,000.

A. These are the minutes of the date of "September, 1938" in red at the top. [313]

A. (Reading) "It was regularly moved by Mr. Grill and seconded by Mr. Ferbert that the president of this corporation, Mr. J. E. Stiegler, be and hereby is authorized and directed, for and on behalf of this corporation, to borrow the sum of \$25,000 from any person, firm or corporation, upon the best terms possible, giving the note of this corporation or other written obligation, and for and on behalf of this corporation to execute a pledge or assignment of any or all of the assets of the corporation as security therefor. Said motion carried by the votes of Mr. Stiegler, Mr. Ferbert, Mr. Hickeox, Mr. Collins and Mr. Grill. Mr. Woodworth and Mr. Vance voted 'No' thereon."

Q. And was that done? Was the \$25,000 borrowed from anybody?

(Testimony of William L. Grill.)

A. No. Mr. Vance refused to take the money, to take these open account advances. [314]

Q. Was it offered him?

A. Oh, you ought to know. You were down here at one time.

Q. It was, it was offered?

A. I say it was offered to him, the money was offered to him and it was refused.

Q. When?

A. I don't remember now, but it was refused. He refused to accept it and said, "Well, no;" unless he got his production notes secured by a mortgage on the assets or in some other fashion. That is what we discussed down here at one of these sessions I came down. [315]

Q. By Mr. Abel: How much have you received in traveling expenses through Mr. Garbutt?

A. The two occasions are the only occasions that I ever received anything from him, and those were loans to Mutual, as I have stated.

Q. Well, who on behalf of Mutual arranged the loans?

A. Well, I discussed on each occasion with the president of the company, Mr. Stiegler, told him what the circumstances were.

Q. On each occasion?

A. Of these two particular occasions; and in addition to that—well, I guess I had better not say anything more. [316]

(Testimony of William L. Grill.)

Q. What else?           A. What is that?

Q. What have you in mind?

A. Well, I said that on one other occasion they paid it out of their own pockets as a part of my expense, Mr. Ferbert and Mr. Stiegler.

Q. With reference to the Los Angeles quiet title suit how and when did the existence of that suit come to your attention?

A. To the best of my recollection, through Mr. Garbutt.

Q. When?

A. I can't tell you the dates. There was some correspondence in connection with it. [317]

Q. By Mr. Abel: The first letter is a letter from Garbutt to yourself giving information of the quiet title suit in Spokane?           A. Yes.

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PLAINTIFFS' EXHIBIT 91

April 15, 1939

Mr. Wm. L. Grill,  
Colman Building,  
Seattle, Wash.

Dear Mr. Grill:

The office this day received from O. C. Moore, Attorney at Law, Spokane, who, it is presumed, is a partner of Abel, a summons and complaint by mail, in suit No. 103,233, which is apparently the

(Testimony of William L. Grill.)

same as the copy you sent Mr. Hinckle. This was addressed on the envelope to

Log Cabin Mines Company  
411 W. Seventh St., Room 712,  
Los Angeles, California.

Mr. Hinckle thinks it is doubtful whether such a suit to quiet title could be successfully maintained on service by publication in the State of Washington as the contract in which title is sought to be quieted is no longer within that jurisdiction.

The property itself is in California, the contract is not in Washington, and neither is it in the possession of nor does it belong to the Mutual Gold Corporation.

Yours sincerely,

FRANK A. GARBUTT.

FAG-C.

April 21, 1939

Mr. Wm. L. Grill,  
Colman Building,  
Seattle, Wash.

Air Mail

Dear Mr. Grill:

In discussing with Mr. Hinckle today the advisability and possibility of a quiet title suit by the Log Cabin Mines Company against the Mutual, et al, Mr. Hinckle suggested that the Mutual itself has

(Testimony of William L. Grill.)

no defense and could probably file a disclaimer as an answer.

He also suggested the advisability of bringing this suit against every stockholder the Mutual has.

In order to do this, we would have to have your list of stockholders to date, and their addresses, because it will be necessary to send a copy of the complaint to all of them by registered mail. At the same time we ought to include any creditors you have who are not stockholders. I do not know whether the Vance Lumber Company is a stockholder or not but it should be included in any event, I think.

Mr. Hinckle has also suggested that filing this suit against the stockholders who are loyal to you might cause some comment, in which case we might segregate the sheep from the goats and file the quiet title suit against those who differ with you. It would also save some money in registered mail, etc.

With kind regards.

Yours sincerely,

FRANK A. GARBUTT.

FAG-C.

cc to Mr. Weller.



(Testimony of William L. Grill.)

Law Offices of  
JONES & BRONSON  
Colman Building  
Seattle

April 24, 1939

Mr. Frank A. Garbutt  
712-411 West Seventh Street  
Los Angeles, California

Dear Mr. Garbutt:

Re No. 112, you may rest assured that I do not now have, nor have ever had the impression that you will get weak-kneed with reference to the litigation.

Replying to yours of the 21st, 113, will say that I quite agree that the Mutual could file a disclaimer of no defense as an answer to an action to quiet title.

It would seem to me to be a rather extended proceeding to make all of the stockholders of the Mutual a party to such action. However, it might be advisable to include those who may be in a position by reason of having finances as parties thereto, as well as creditors. If you desire to make all of the stockholders parties, we will be glad to forward a list, together with their addresses. If you desire a list of those who have opposed the situation, which would include the Vances and the Vance Lumber Company, we will have this prepared.

(Testimony of William L. Grill.)

As I have written you, we are going to hold our directors' meeting early in May and if you desire to present anything to the board with reference to the approval of the loan which you have suggested, as well as the ratification of all acts of the officers between meetings, please have Mr. Hinckle prepare what you want and it will be presented.

With kindest regards, I am

Yours sincerely,

W. L. GRILL.

WLG:pb

May 18, 1939.

Mr. Wm. L. Grill,  
Colman Building,  
Seattle, Wash.

Air Mail

Dear Mr. Grill:

The Log Cabin Mines Company has brought suit to quiet title to the contract and property and Mr. Hinckle served Mr. Collins, as representative of the Mutual.

As the Mutual was served out of the county, it has thirty days in which to answer, after which time a default can be taken.

In order to be assured that the Mutual has actual knowledge of the matter, I am sending you herewith copy of the Complaint and Summons although I presume that Russell has advised the Company prior to this.

(Testimony of William L. Grill.)

In any event, you can acquaint either the Company or Mr. Weller with it, as you think best.

Mr. Hinckle thinks that a quiet title suit by the Log Cabin against the Mutual will be sufficient and that any person else who holds through or under the Mutual will be bound thereby.

However this may be, we can get a quick judgment against the Mutual and go to trial or secure a default quicker, and in event it should be deemed necessary, we can sue the others later.

If the Mutual appears we can agree on an early trial and if it does not appear we can take a default on or about June 7th.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

Enc.

Law Offices of  
JONES & BRONSON  
Colman Building  
Seattle

May 22, 1939

Mr. Frank A. Garbutt  
712-411 West Seventh Street  
Los Angeles

Dear Mr. Garbutt:

I wish to again thank you for the picture of the tailings dam, as I had not heretofore received one.

(Testimony of William L. Grill.)

This is likewise a good picture and would indicate that these tailings should bother no one. Whenever you can deposit your tailings for stope filling as you suggest, it will mean an additional saving.

I wish to acknowledge receipt of your favor of the 18th enclosing copy of your suit to quiet title. I think we should call a meeting of the board of directors about the time you can take your default so that the entire board will have knowledge of your action and it cannot later be said that any advantage was taken of the situation. I will try to arrange for a meeting at about that time. The Mutual has no defense and would have none, even if it appeared.

With kindest regards, I am

Yours sincerely

W. L. GRILL.

WLG:pb

Law Offices of  
JONES & BRONSON  
Colman Building  
Seattle

May 25, 1939

Mr. Frank A. Garbutt  
712-411 West Seventh Street  
Los Angeles, California

Dear Mr. Garbutt:

Replying to yours of May 18 more specifically, I have asked Mr. Stiegler to call a meeting at my

(Testimony of William L. Grill.)

office to determine whether or not to defend your suit. I think the board should act upon this.

Of course there is no defense, but I don't want it asserted later that the board should have taken action and did not do so.

Yours very truly

W. L. GRILL.

WLG:pb

Law Offices of  
JONES & BRONSON  
Colman Building  
Seattle .

June 8, 1939

Mr. Frank A. Garbutt  
712-411 West Seventh Street  
Los Angeles, California

Dear Mr. Garbutt:

Yours, #163, 164 received.

I forgot to inform you that at the directors' meeting held here, a resolution was passed to the effect that the company would not defend the suit to quiet title which you have instituted. We thought it advisable to bring the matter before the board so that full knowledge would be had of such action by it.

You will find enclosed herewith minutes of the meeting for your files.

(Testimony of William L. Grill.)

With kindest regards, I am

Yours sincerely,

W. L. GRILL.

WLG:pb

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Q. By Mr. Abel: The first letter informed you that a suit was pending, had been brought in Spokane County? A. Yes.

Q. To quiet title to the contract, the purchase [319] contract? A. Yes.

Mr. Moore: What is the date of that?

Mr. Abel: April 15, 1939. May I read these to your Honor? It will save a lot of examination.

Q. By Mr. Abel: On the 21st you received another letter?

A. No; I probably received it later than that date. That is the date of the letter. I apparently received the original of that letter.

Q. In which he suggested the advisability of a quiet title suit by Log Cabin Mines?

A. That is my recollection of the letter.

Q. Against Mutual; and Mutual had no defense and would probably file a disclaimer?

A. Correct.

Q. And Mr. Hinckle also suggested the advisability of bringing this suit against every stockholder Mutual had?

A. That is what the letter states.



(Testimony of William L. Grill.)

Q. And then you replied on the 24th?

A. Yes. [320]

Q. This is your letter?

A. That is my letter; yes.

Q. In which you agreed that the Mutual could file a disclaimer to make no defense to the action to quiet title?

A. Whatever the letter states there.

Q. That was your advice, was it not, to Mr. Garbutt?

A. I don't believe that is the language I used. I don't remember it. I think I said they had no defense to the action. I don't remember what the exact language was, but **I think I said that.**

Q. Quoting from the letter:

“Replying to yours of the 21st, 113, will say that I quite agree that the Mutual could file a disclaimer of no defense as an answer to an action to quiet title.”

A. Well, I said it.

Q. And you offered to furnish him a list of the stockholders?

A. Yes; I believe so.

Q. The stock-holding defendants, so that they could be brought in, including the Vances and the Vance Lumber Company?

A. Yes.

Q. And then you were informed on May 18th that suit had been brought and Mr. Hinckle had served Mr. Collins?

A. If that is what it so states. I can't remember all of it. [321]

(Testimony of William L. Grill.)

Q. When did you receive a copy of that complaint?

A. I will have to refer to the correspondence to see.

Q. Did that letter of May 18th enclose a copy?

A. It so states. I presume that I received it.

Q. A copy of that complaint?

A. It says, the letter of May 18, 1939: "In order to be assured that the Mutual has actual knowledge of the matter, I am sending you herewith copy of the Complaint and Summons although I presume that Russell has advised the Company prior to this." Russell Collins that means.

Q. That was on May 18?                   A. '39.

Q. And the next meeting of the board of directors of Mutual was on June 6, was it not?

A. I can't tell you without the book, without the minute book.

Q. You are shown the minute book of that date. The meeting was held at your office?

A. Apparently so. June 6th.

Q. Was the meeting held in your office?

A. Yes; it was held in my office. [322]

Q. But you were there?

A. Yes; I was present at the meeting. The minutes so show.

Q. Now I read and quote:

"It was moved and seconded that inasmuch as the Mutual Gold Corporation has no interest

(Testimony of William L. Grill.)

in the mining claims in California at this time that the Company make no defense to the action of"—

then Mr. Garbutt's name appears in type and a line through it and above it

“Log Cabin Mines Co. brought to quiet title to said claims in the Log Cabin Mines Company. Motion was carried by the votes of J. E. Stiegler, G. H. Ferbert and W. L. Grill. Opposed Lloyd J. Vance.”

A. Yes; it was brought up at that meeting and discussed.

Q. Yes.

A. And the result was and the action of the board that no defense be put in to this quiet title suit.

Q. Then, would you say that it was not until June 6th that the matter came to the attention of the members of the [323] board, except yourself.

A. I would not say that because I am certain that it had been brought to the attention—I know that it had—of Mr. Stiegler and Mr. Weller in Spokane.

Q. How do you know that?

A. Well, my recollection is that I have some correspondence in my office between Mr. Weller and myself, although I haven't it with me and that is just my recollection, and possibly some with Mr. Stiegler, too. [324]

(Testimony of William L. Grill.)

Q. Weren't you in daily communication with Mr. Garbutt during this whole period?

A. I was not.

Q. By phone and by letter?

A. I was not. What period now are you referring to?

Q. During the period of the two quiet title suits?

A. Well, I was in correspondence with him, but not in daily correspondence with him.

Q. Didn't you advise him that the quiet title suit could not be maintained in the State of Washington because the property was in California?

A. No; I wouldn't say that. If the parties were before the court in Washington I think the Washington court could pass upon it. But I think they couldn't get——

Q. How could jurisdiction be acquired of Log Cabin?

A. Well, I say that that was the point; you couldn't serve the Log Cabin in Washington.

Q. Now, then, wasn't it with that in mind that you resigned off the board of Log Cabin?

A. Yes. At first blush, when I heard of it, I thought: Well, we better get off; and on the second consideration, I came to the conclusion it was not necessary and went back on later.

Q. I know.

A. But you are quite correct, however, that I did resign as soon as I learned about it. [325]

(Testimony of William L. Grill.)

Q. You resigned from the Log Cabin Mines so that service could not be made upon you in the State of Washington on Log Cabin Mines?

A. Yes; and I think I so advised Russell Collins.

Q. All three directors of Log Cabin Mines went off the board at about the same time in the State of Washington?

A. I think two or three went off. If they were all on, they all went off. [326]

